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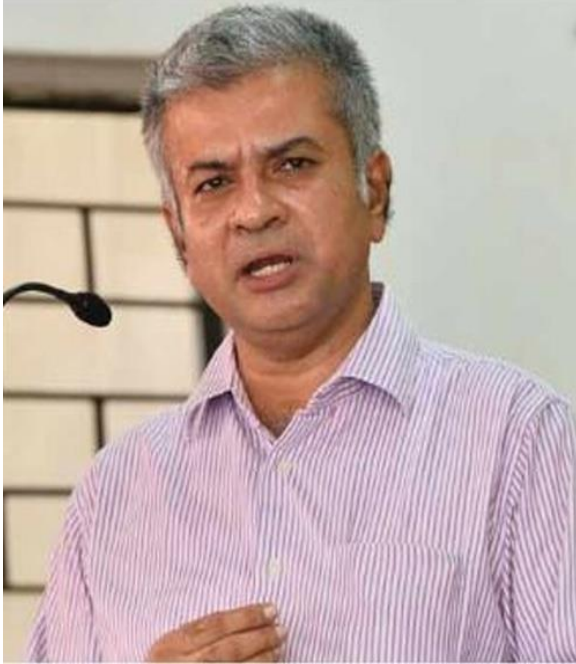
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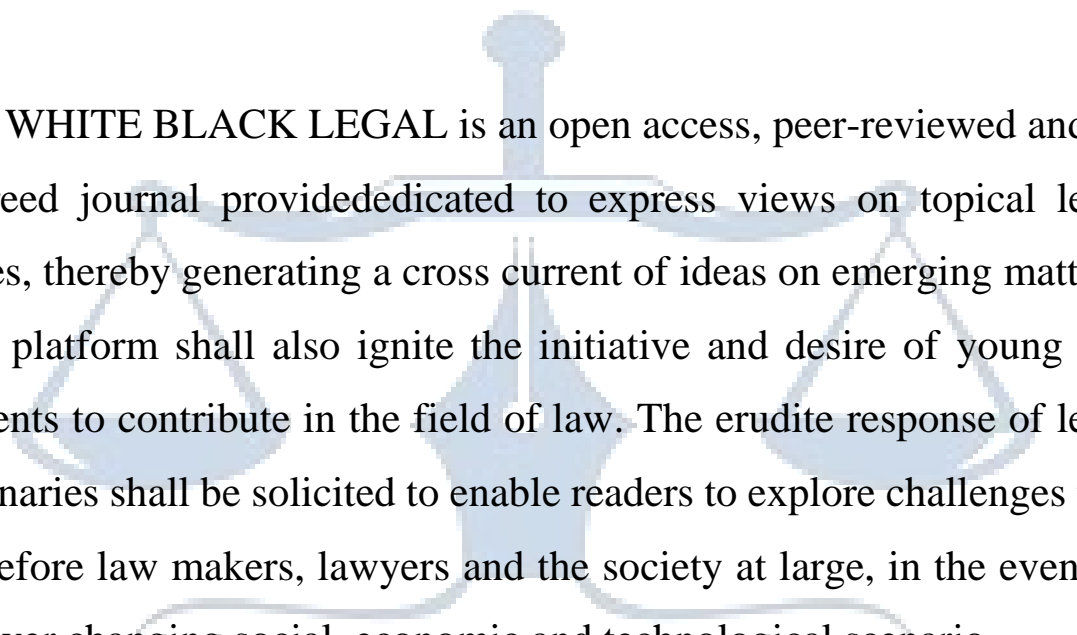
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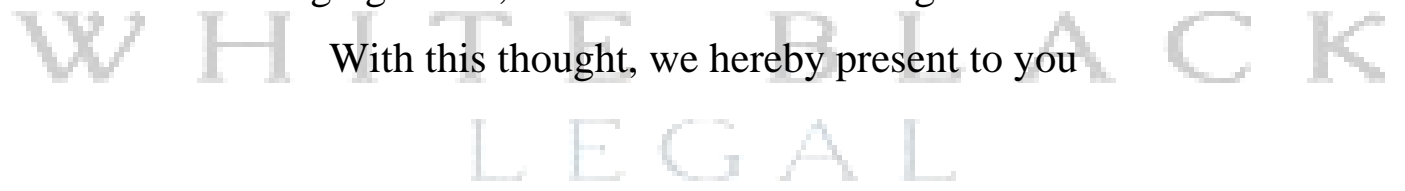
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire 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





# **THE DOCTRINE OF PROPORTIONALITY**

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## **Abstract**

The idea of proportionality has arisen as a key tenet in administrative law, governing the balance between governmental acts and individual rights. This study critically examines the use and implications of the proportionality principle in various legal regimes. The paper examines case law, legislative legislation, and administrative practices to explain how proportionality guarantees that administrative actions are appropriate, required, and balanced in respect to their goals. The study examines the doctrinal history, compares its implementation across jurisdictions, and reveals both strengths and weaknesses in attaining fair administrative justice. Finally, the research emphasises the doctrine's significance in promoting accountability and safeguarding basic rights against excessive or arbitrary administrative acts, arguing for its nuanced and consistent implementation in modern administrative law.

## **Introduction**

Administrative law<sup>1</sup> may be described as a heuristic discipline. This research focuses on public legislation that promotes anti-authoritarian ideals. The goal is to create a society that follows the rule of law and values fairness, rationality, and justice. Administrative law focuses on the legal issues of administration and the fundamental principles that guide administrative institutions.

The rapid expansion of administrative law in the 20th century was a significant and notable transformation. Administrative law existed before the 20th century, but it wasn't until this century that there was a substantial shift in understanding the role and function of the State. Administrative law emerged as a distinct branch of study in the mid-20th century, especially in India.

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<sup>1</sup> Lloyd Law College, What is Administrative Law- A Complete Guide, February 8, 2024  
<https://www.lloydlawcollege.edu.in/blog/what-is-administrative-law.html>

Administrative law applies to civil servants, governmental agencies, companies, local governments, and other quasi-judicial bodies, in addition to administrative authorities themselves. According to Ivor Jennings, administrative law focuses on public management. Administrative law defines and governs the organisation, operations, jurisdiction, and obligations of administrative bodies.

## Background of Administrative Law

Although several jurists have sought to define administrative law, no one has thoroughly defined its nature, scope, and content. The definitions are either excessively broad, including superfluous elements, or too narrow, leaving out essential constituents. Some view the law as a way for the government to exert control.

Administrative law encompasses all aspects of "administration" under its scope.<sup>2</sup>

1. All executive actions, policies, and programmes.
2. All administrative components of the judiciary and parliament.
3. All behaviours of the state similar to those of actors (state agency and instrumentality)
4. Non-state actors' actions in carrying out public tasks.

Sir Ivor Jennings defines administrative law as the legal framework that governs the field of administration. This constitution specifies the organisation, jurisdiction, and responsibilities of administrative bodies. This method fails to distinguish between Administrative<sup>3</sup> and Constitutional law. The organization's structure, authority, and duties are prioritised over the specific means used to carry them out. Administrative law is concerned with how ministers perform their obligations towards individuals or groups, rather than the process of appointing them. The appointment of the Minister of Housing and Rehabilitation is not subject to administrative law. When a minister approves a new township project that involves acquiring dwellings and properties belonging to local residents, administrative law becomes involved.

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<sup>2</sup> Tissy Annie Thomas, All you need to know about Administrative Law, Blog iPleaders (June 26, 2018) <https://blog.iplayers.in/administrative-law-1/>

<sup>3</sup> Understanding the Nature and Scope of Administrative Law, Taxmann (November 29, 2023) <https://www.taxmann.com/post/blog/nature-and-scope-of-administrative-law>



## The Doctrine of Proportionality

The Doctrine of Proportionality gained popularity in Europe throughout the nineteenth century, although its roots may be found in Prussia. This suggests that a response to an individual's behaviour should be proportionate to the situation. According to the concept of proportionality, public authorities must establish a reasonable link between their objectives and the measures used to achieve them. The goal is to minimise infringement on individual rights as much as possible. Courts may reject administrative actions that use arbitrary discrimination or disproportionate means to attain their aims, since they breach the Doctrine of Proportionality.<sup>4</sup>

The concept of proportionality can be used to justify administrative actions that violate people's rights. Courts scrutinise the government's actions and dispute the validity of its rulings. The courts consider both the harm to the right and the intended outcome. The regulating body's punishment amount is not subject to careful scrutiny by judges. Courts prioritise avoiding arbitrariness, especially when regulatory bodies have little authority over punishment.

*Applicability of proportionality in the field of administrative law in 2 situations:*

1. When an administrative action violates basic rights, courts conduct a thorough investigation to determine the appropriateness of the authority's judgements. The court will evaluate any negative impact on the pursued rights and aims.
2. When the administrative authority imposes a punishment and the question of its magnitude arises, the court will not employ a strict scrutiny test. Courts believe that administrative authorities can pick the degree of punishment, but arbitrary decision-making must be avoided.

### In The Context Of India

The landmark decision in *Union of India v. G. Ganayutham*,<sup>5</sup> in which the Indian Supreme Court examined the applicability of proportionality. The Supreme Court determined that Wednesbury's principles would apply and function as a guiding principle in India, but only to the degree that they did not violate basic rights, after carefully examining English legislation on unreasonableness and proportionality. The court will begin at a different point in the proceedings if there are infringement

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<sup>4</sup> Doctrine of Proportionality, Lawnotes <https://lawnotes.co/doctrine-of-proportionality/>

<sup>5</sup> Union of India v. G. Ganayutham, SC 1997

of basic rights.

After a thorough investigation by several committees, it was found that administrative actions in India that violate the fundamental freedoms outlined in Articles 19 and 21 have always been subject to a strict scrutiny for their adherence to the principle of proportionality, even in cases where the text does not expressly state this. It is important to remember that full proportionality is the concept at issue. Remembering that the Doctrine of Proportionality applies uniformly to judicial review of any administrative action that contravenes certain sections of the Indian Constitution, such as Articles 19<sup>6</sup> and 21, is crucial.

Article 14 of the Indian Supreme Court Constitution states that justices would use the Doctrine of Proportionality and a Primary Review in cases where administrative acts are unjust. When an administrative action is thought to be arbitrary, the secondary review based on the entire Wednesbury principle is used. Article 14 of the Indian Constitution states that fines imposed under the service legislation are sometimes said to be arbitrary. But according to the Supreme Court, the Wednesbury principle only applies to secondary review.

*Two components of the Principle of Proportionality provide interest to decision-making:*

1. This has to be examined to see whether or not the various objective components were balanced correctly.
2. The aforementioned action imposed excessive strain on those impacted by it or made things more difficult for them.

Considering the well-known case of *Ranjit Thakur v. Union of India*<sup>7</sup>, in this instance, an Army officer just disobeyed his superior's orders by refusing to consume the food that was provided to him. Following a protracted Court Martial trial, he was declared guilty and handed a severe one-year term. He was also dismissed from the military and declared unsuitable for employment in the future. In this case, judicial review was maintained, but not in support of the judgement per se, but rather against the process by which it was made.

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<sup>6</sup> The Constitution of India, 1950

<sup>7</sup> *Ranjit Thakur v. Union of India*, AIR 1987

In reality, though, the question was whether the offence and the punishment for the offence to the perpetrator needed to be equal. The question of the type of punishment to be given or its severity was perfectly legitimate and within the jurisdiction of the court martial. It is essential that you understand that they should not be excessively aggressive or retaliatory. In any case, it must not proceed to the extent that it results in, is viewed as excessive, or is regarded as a choice that is necessary for the running of the business. A component of the idea of judicial review is the proportionality theory. This idea will also address cases where a court has rendered an illogical sentence; in these cases, the decision that needs to be made at that specific moment must come from the approval of judicial review since it has been established that each power has its own set of legally defined bounds.

While proportionality was declared a significant element of the Indian Constitution in the early 2000s, it is clear from analysing the current situation in India that the concept has not been thoroughly applied. Although it applies extremely narrowly and concisely, Indian courts also have some comparable jurisdiction under this theory. However, it is firmly believed that courts should adopt and strictly enforce the aforementioned standards in order to prevent administrative authorities from making arbitrary judgements, particularly where those choices go above and beyond the basic criteria or display arbitrary behaviour. The courts will therefore be required to assess the standing of executive bodies; but they must recognise that the doctrine's goal is to regulate the behaviour of specific administrative entities, not the standing of any executive body.

## Case Laws

### 1. *Om Kumar v. Union of India*<sup>8</sup>

In *Om Kumar v. Union of India*, the proportionality idea was created. The Supreme Court denied the disciplinary authority's request to reconsider the penalties meted out to the four public officials in this instance, citing the fact that the sentences were both "shockingly disproportionate" to the wrongdoings and outside the bounds of the law. In following cases, the US Supreme Court provided clarification on this legal principle.

### 1. *Coimbatore District Central Coop. Bank v. Employees Assn*<sup>9</sup>

The concept and its applicability in this case were thoroughly discussed by the Supreme Court.

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<sup>8</sup> *Om Kumar v. Union of India*, SC 2000

<sup>9</sup> *Coimbatore District Central Coop. Bank v. Employees Assn.*, HC 1968

Respondents were bank workers who embarked on an unauthorised work stoppage. With a liberal stance, the committee decided not to fire them; instead, they lost their 1-4 years of accumulated increment. The case was brought before the labour court, which upheld the accusations and declined to vacate the sentence. The court reduces their sentence in an appeal to the High Court single judge and division bench since the charges against them were severe and the punishment was out of proportion to the offence. By decree, the disciplinary commission was dismissed. Once more, the High Court declined to look into and discipline their behaviour of the respondent. Respondent's severe tone was against bank policy. The High Court lessened the penalty since they needed these increases because they were raising a family. Under the Doctrine of Proportionality, the Court may review or remit sentences to tribunals if an administrative body takes a step that no reasonable authority would have taken to accomplish the goal or if the penalty is so disproportionate as to shock the conscience of the Court. The Supreme Court determined that the High Court erred when it reduced the penalty for compassionate reasons, which is not a legitimate justification for proportionality. This meant that the division bench and lone judge of the HC were incorrect. The Court further stated that under Article 226 administrative bodies' discretionary powers cannot be superseded by the High Court.

## **2. *Dev Singh v. Punjab Tourism Development Corporation*<sup>10</sup>**

The SC lessened the disciplinary committee's penalty in this instance by using the Doctrine of Proportionality. For twenty years, the appellant was employed by the corporation without facing any claims of misconduct. He was the subject of a disciplinary investigation for a bylaw infraction—losing a file. Following its inquiry, the committee made the recommendation to fire him. He proceeded to the Supreme Court after his appeal was denied by the High Court. Court rulings were affirmed by the Apex Court. The claim that the misplacing of a file is a serious enough offence to remove the offending party from their job was rejected by the court. The Court noted that the concerned individual had worked for the company for twenty years, during which no reports of misconduct had been made. Furthermore, it's critical to stress that neglect, not a purposeful act of file misplacing, is what's happening in this instance. The court feels that the act of taking him out of duty as a disciplinary measure is excessive and causes moral indignation. The Supreme Court has made clear that it will not intervene with disciplinary committee punishments, with the exception of situations where the punishment is thought to be excessive in comparison to the offence, as this specific case illustrates. The

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<sup>10</sup> Dev Singh v. Punjab Tourism Development Corporation, SC 2003



courtlessened the penalty's harshness in order to lessen the likelihood of legal action.

The situation is a great illustration of the Doctrine of Proportionality. The concept states that the methods used to achieve the goal should be minimum restrictive and strictly limited. The corporation fired the appellant in an effort to deter future careless behaviour. Since the least restrictive means required by law were not applied in his sentencing, the court applied the doctrine of proportionality and considered the appropriateness of the penalty. The idea of the doctrine of proportionality is applied as a litmus test to assess the fairness of the statutory interpretation process. It is also applied as a rational means of aiding in the determination of the proper proportionality between the goals of the law and the methods used to accomplish them. The notion of reading legislation in a way that ensures justice and fairness is closely related to the proportionality principle. It is a kind of limitation that says the measures the government takes or the laws that are approved by the legislature must be less harsh when used to accomplish the intended goals. This is done with the least possible impact on individual rights in order to preserve a sense of proportion between the administration's objectives and the protection of the public interest.



## **Conclusion**

The doctrine of proportionality stands as a cornerstone in administrative law, offering a crucial framework for ensuring that governmental actions do not infringe upon individual rights unnecessarily or excessively. Through a comprehensive examination of case law, legislative provisions, and administrative practices, this research has demonstrated the doctrine's capacity to balance administrative goals with fundamental rights effectively. The historical development and varied application of proportionality across jurisdictions underscore its adaptability and significance in promoting fair administrative justice.

The doctrine's implementation in India, particularly, highlights its evolving role in judicial review. Key cases such as *Union of India v. G. Ganayutham* and *Om Kumar v. Union of India* illustrate the judiciary's efforts to apply proportionality in assessing the reasonableness and necessity of administrative actions. Despite the principle's recognition, its full potential remains underutilized, necessitating a more rigorous and consistent application to safeguard against arbitrary and disproportionate administrative decisions.

Ultimately, the doctrine of proportionality serves not only as a tool for judicial scrutiny but also as a guiding principle for administrative authorities. By ensuring that measures taken are proportional to their intended aims, the doctrine fosters a more accountable and rights-respecting administrative process. For the continued development and application of administrative law, it is imperative that courts and administrative bodies alike embrace and rigorously enforce the proportionality principle, thereby enhancing the protection of individual rights and the legitimacy of administrative actions.



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