INDIAN JOURNAL OF LAW, POLITY AND ADMINISTRATION

ISSN: 2582-7677

DOCTRINE OF PROPORTIONALITY IN INDIAN ADMINISTRATIVE LAW: AN ANALYSIS

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ABSTRACT

Development of the welfare state and few other reasons such as advancement in technology, etc. have caused the Legislature to confer huge amount of discretion on the Executive as well as delegate many of its functions to bureaucrats which has in turn caused the administrative authority to become exceedingly powerful. It is in this background that the principle of Webnesbury unreasonableness and later on, the doctrine of proportionality emerged. The proportionality doctrine ascertains whether legal standards are complied with by ensuring that administrative decisions are least intrusive of the rights of citizens and that there is a balance between the two. Though the Webnesbury unreasonableness principle can be said to have been more popular earlier on, it is nowadays commonly being substituted by the proportionality doctrine which ensures a proper balance between factors that influence administrative decisions. However, it is disheartening to note that even though the doctrine became part of Indian law nearly twenty years ago, in the case of Omkumar v. Union of India, there have not been any significant developments in it, in the Indian context, till date. The doctrine has been allowed only limited application in India though the Judiciary has been given considerable power in this respect under Articles 13, 32 and 226 of the Constitution. Applying the doctrine to review administrative actions so as to safeguard human rights to the maximum possible extent is hence the need of hour. With all these aspects in the backdrop, this paper aims at understanding the meaning and concept of the doctrine of proportionality, the principle of Webnesbury unreasonableness and the doctrine of margin of appreciation. The paper also aims at chalking out the different models of the doctrine, i.e., the British model of proportionality and the European model of proportionality. Additionally, the paper aims at analysing and interpreting the judicial interpretation of the doctrine in the Indian context, through cases such as Union of India v. G. Ganayutham and Sandeep Subhash Parate v. State of Maharashtra, and also the application of the doctrine in the country.

Keywords: *Proportionality, Webnesbury Unreasonableness, Margin of Appreciation, British Model, European Model.*

INTRODUCTION

Though the principle of judicial review was brought into existence in the early part of the nineteenth century in the case of *William Marbury v. James Madison, Secretary of State of the United States*[1], it was only after World War II more than a century later that the concept gained popularity in the rest of the world. The extent of judicial review has since then been widely discussed and debated in administrative law. The evolution, growth and development of the welfare state and few other reasons such as technological advancement, etc. have caused the Legislature to confer huge amount of discretion on the Executive as well as delegate many of its functions to bureaucrats which has in turn caused the administrative authority to become exceedingly powerful.[2]

In such a scenario, there is high chance of abuse of discretion and power related thereto by the administrative authority which gives rise to the need for judicial review.[3] However, such intervention must not cause the Judiciary to encroach into areas that have specifically been reserved for the Executive.[4] Due to this reason, judicial review should always be restricted in such a manner that only as much intervention takes place as is required to control and regulate misuse of discretionary power by the administrative authority.[5]

Common law legal systems and civil law legal systems tackled the problem of ensuring limited judicial intervention in administrative orders, differently. In common law countries, a concept known as secondary review in which Wednesbury unreasonableness was the criteria for judicial intervention was introduced. In such jurisdictions, an administrative order would be struck down by the Judiciary if such order appeared to be *"so absurd that no sensible person could ever dream that it lay within the powers of the authority"*.[6]

In civil law countries, however, a concept known as primary review in which proportionality was the criteria for judicial intervention was introduced. In such jurisdictions, an administrative order would be struck down by the Judiciary if such order appeared to be *"more drastic than was necessary for attaining the desired*

[1]William Marbury v. James Madison, Secretary of State of the United States, 5 US 137 (1803).
[2]Normawati Binti Hashim, *Constitutional Review of Administrative Actions: Development in United Kingdom, India, Malaysia, South Africa and Hong Kong*, 2 International Journal of Sosiological Jurisprudence 134, 134-140 (2019).
[3]*Id.*
[4]Aditi Mallavarapu, *Judicial Review of Administrative Discretion in Awarding Government Contracts: The Indian Perspective*, 5 Journal of Global Research & Analysis 48, 48-54 (2016).
[5]*Id.*
[6]G. L. Peiris, *Wednesbury Unreasonableness: The Expanding Canvas*, 46 The Cambridge Law Journal 53, 53-82 (1987).

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result".[7] Primary review or proportionality-based review thereafter slowly but steadily made its way into common law systems due to its inherent benefits as well as the establishment of the European Court and growth of European jurisprudence which led to the spread of civil law doctrines and principles across the globe.[8]

India, being a former British colony, follows the common law legal system that had been established in the country by the British government. English precedents are also often referred to by the Judiciary while giving judgements. [9] The case of administrative law in India is also somewhat similar. Though Articles 226, 32 and 13 of the Indian Constitution confer a considerable amount of power on the Judiciary to intervene in administrative decisions, Indian courts over of the years have adhered to the principle of Wednesbury reasonableness as is followed in Britain.[10] Despite this, due to widespread popularity of the doctrine and other such reasons, Indian courts were finally forced to accept the proportionality doctrine to be a part of Indian law in the case of *Omkumar v. Union of India*[11] two decades ago. This paper will hence analyse and interpret the proportionality doctrine in the Indian context.

PRINCIPLE OF WEDNESBURY UNREASONABLENESS AND DOCTRINE OF PROPORTIONALITY: MEANING AND CONCEPT

Lord Diplock, in the case of *Council of Civil Service Unions v. Minister for the Civil Services*[12], devised a tripartite classification for external structure of judicial review in terms of illegality, irrationality and procedural impropriety. This classification remains important even today despite development of the doctrine of legitimate expectation, changes in the concept of jurisdiction, decline in prerogative powers and other such changes and developments in judicial review.[13] It can, however, be said that irrationality has much more relevance in the present day than illegality and procedural impropriety.

[7]*Id.*
[8]*Supra* note 4.
[9]Ashwita Ambast, *Where's Waldo: Looking for the Doctrine of Proportionality in Indian Free Speech Jurisprudence*, 9 Vienna Journal on International Constitutional Law 344, 344-370 (2015).
[10]*Id.*
[11]Omkumar v. Union of India, AIR 2000 SC 3689.
[12]Council of Civil Service Unions. v. Minister for the Civil Services, (1984) 3 All ER 935.
[13]Ajoy P.B., *Administrative Action and the Doctrine of Proportionality in India*, 1 IOSR Journal of Humanities and Social Science 16, 16-23 (2012).

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Principle of Wednesbury Unreasonableness

Primarily, the concept of irrationality was associated with Webnesbury unreasonableness, a principle that originated in the case of *Associated Picture House v. Wednesbury Corporation*[14]. The principle basically connotes that the discretion that has been conferred on the administration should be exercised properly and reasonably in accordance to the law.[15] Pursuant to this, matters relevant to the subject at hand should be included and matters irrelevant to the subject at hand should be excluded from consideration while taking administrative decisions.[16] Any action in contravention to this will be considered to be unreasonable and will attract the Wednesbury unreasonableness principle. Though no standard test for universal application can be made applicable in case of Wednesbury unreasonableness and though the principle is somewhat vague and not capable of objective evaluation, according to Lord Diplock:

"Wednesbury unreasonableness is a principle that applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who applied his mind to the question to be decided could have arrived at it".[17]

Doctrine of Proportionality

The proportionality doctrine basically prescribes that decisions and orders of the administration should only be as restrictive as absolutely necessary for public purpose.[18] As opposed to the Webnesbury unreasonableness principle, the proportionality doctrine has objective criteria for analysis and review which can be applied on case-to-case basis through pre-determined tests. Furthermore, Lord Diplock, while classifying the external structure of judicial review, had also opined that the concept of proportionality would become one of the grounds for judicial review in the future in addition to illegality, irrationality and procedural impropriety.[19] Proportionality and Wednesbury unreasonableness are widely considered to be sub-divisions of the concept of irrationality. Though initially, there was a slight conflict between these two concepts, due to changes and developments that have occurred in the doctrine in recent years, proportionality

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[14]Associated Picture House v. Wednesbury Corporation, (1947) 2 All ER 680 (CA).
[15]Shivaji Felix, *Engaging Unreasonableness and Proportionality as Standards of Review in England, India and Sri Lanka: Comparative Studies*, 2006 Acta Juridica 95, 95-116 (2006).
[16]*Id.*
[17]*Id.*
[18]Vikram Aditya Narayan and Jahnavi Sindhu, *A Historical Argument for Proportionality under the Indian Constitution*, 2 Indian Law Review 51, 51-88 (2018).
[19]*Supra* note 13.

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has now become synonymous with irrationality and it is now the only aspect of the concept of irrationality that is taken into consideration.[20] In this context Lord Diplock has said that:

"The principle of proportionality envisages that a public authority ought to maintain a sense of proportion between his particular goals and the means he employees to achieve those goals, so that his action impinges on the individual rights to the minimum extent to preserve public interest".[21]

MARGIN OF APPRECIATION DOCTRINE AND PROPORTIONALITY DOCTRINE

The proportionality doctrine ascertains whether legal standards are complied with by ensuring that administrative decisions are least intrusive of the rights of the citizens and that there is a balance between such intrusion and the exercise of rights.[22] The administration has been conferred adequate discretion, depending upon the subject matter and nature of rights involved, to select the best possible option from the various alternatives available. As long as their choice is within the permissible limit of discretion, their decision will not be questioned by the Judiciary.[23] However, even in this scenario, the Judiciary will retain the right to examine whether excessive or unnecessary violation of rights had taken place or not.

The European Court of Human Rights developed a doctrine known as margin of appreciation or margin of state direction so as to maintain a balance between individual rights and national interests and also resolve the conflicts that may arise in this regard.[24] The doctrine is mainly applied in international human rights law and helps the court in judging whether or not contracting parties should be allowed to impose restrictions on enjoyment of rights. Practical differences in implementing the articles of the European Convention on Human Rights are hence reconciled in this manner.[25]

After the enactment of the Human Rights Act, 1998 in the United Kingdom, there arose the need for a domestic equivalent to this doctrine which took into consideration the relationship of the Judiciary with other government organs such as the Legislature and proportionality thereof.[26] The proportionality doctrine can be said to be this domestic equivalent. However, as the European Court of Human Rights is an international tribunal that has to take into consideration cultural diversity of human right conceptions, substantial

[20]Ram Pandit, *Doctrine of Proportionality*, 1 Law Audience Journal 1, 1-6 (2018).
[21]*Supra* note 13.
[22]Namita Vashishtha, *Principle of Proportionality: Extent and Application in Industrial Disputes*, 1 Shimla Law Review 158, 158-169 (2018).
[23]*Id.*
[24]Prashant Gupta, *Doctrine of Judicial Review: A Comparative Analysis Between India, U.K. and U.S.A*, 1 International Journal of Legal Developments and Allied Issues 49, 49-73 (2019).
[25]*Id.*
[26]*Id.*

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differences are there between the doctrines.[27] The doctrine is hence also referred to "margin of discretion" or "discretionary area of judgment".

The margin of appreciation comprises of two parts: judicial deference and judicial restraint. Judicial deference places reliance on the fact that the Judiciary may not always have the requisite skills or expertise determine the proportionality of an administrative action. In such cases, they will accept the discretion that has been exercised.[28] Judicial restraint, on the other hand, takes into consideration the legality or legal aspect of the decision. This connotes that if the decision that has been taken by the administration is proportionate, the Judiciary will not interfere even though other proportionate decisions are also available.[29]

MODELS OF PROPORTIONALITY DOCTRINE

British Model of Proportionality

The British model of proportionality was propounded by Lord Stynn in the case of *Regina v. Secretary of State for the Home Department, Ex Parte Daly*[30]. The concept, however, first originated in the case of *De Freitas v. Permanent Secretary of Ministry of Agriculture, Fisheries, Land and Housing and Ors.*[31] wherein Lord Clyde devised a three-stage test for the application of the doctrine as follows:

- The administrative intent behind enacting the legislation is sufficient to justify the infringement of the fundamental rights of the citizens.
- There is a reasonable nexus between the administrative intent and the measures that have been adopted so as to fulfil the same.
- The means that have been utilised so as to limit enjoyment of rights do not amount to more than what is required to fulfil the administrative intent.[32]

The model places more emphasis on the attainment of the objective of the legislation using the most effective and efficient, or alternatively, least intrusive means. The model thus provides for assessment of the correctness of administrative orders and decisions on the basis of the factor of necessity. The model stems from the belief that the primary function of the Judiciary is to protect citizens from the Legislature and its

[27] *Id.*
[28] Swatantra Singh Rawat, Proportionality and Judicial Review of Administrative Discretion in India, THE EVOLVING CONCEPT OF THE DOCTRINE OF PROPORTIONALITY IN ADMINISTRATIVE PROCESS (Oct. 19, 2020, 6:45 PM), https://shodhganga.inflibnet.ac.in/bitstream/10603/49259/1/swatantra%20thesis%20%20%20may%202015.pdf.
[29] *Id.*
[30] Regina v. Secretary of State for the Home Department, Ex Parte Daly, (2001) 3 All ER 433 (HL).
[31] De Freitas v. Permanent Secretary of Ministry of Agriculture, Fisheries, Land and Housing and Ors., (1999) 1 A.C. 69.
[32] *Supra* note 13.

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actions. The model hence only permits those legislations with crucial or vital public objectives to restrict the fundamental rights of the citizens. At the same time, the court also has to give due regard to administrative discretion and not intrude or interfere into the same unnecessarily. This is mostly achieved through judicial deference and judicial restraint.[33]

European Model of Proportionality

The proportionality doctrine emerged in Prussia in the nineteenth century. The four-stage test prescribed for the application of the doctrine was thereafter adopted by the European Court of Justice in the case of *R v. Minister of Agriculture, Fisheries and Food, Ex Parte Federation Europeenne de la Sante Animale*[34]. The stages of the test are as follows:

- Legitimacy - The first and foremost stage focuses on whether the objective or aim of the legislation in question is legitimate.
- Suitability - The second stage focuses on whether the legislation has the competence or ability to attain this objective or aim.
- Necessity - The third stage focuses on whether the legislation is the least intrusive means to attain the requite objective or aim.
- Fair balance or proportionality - The fourth and final stage focuses on whether the legislation ultimately confers some sort of benefit, taking into consideration factors such as restriction of fundamental rights of citizens, attainment of objective or aim of the legislation, etc.[35]

The model tries to bring about a balance between the limitation that has been imposed on the enjoyment of rights and the objective or aim that is sought to be achieved through the imposition of such restrictions. The model hence maintains a neutral ground and merely concentrates on optimising the scenario. The model also confers due importance on the discretionary power of the Legislature through application of concepts such as judicial deference and judicial restraint.[36] Judicial deference may be applied in any of the four stages of the model depending on the subject matter, nature of rights, etc. The concept is based on the belief that the decision of the Judiciary will have a higher probability of being correct when it is referred to some other competent authority such as the Executive. In such a scenario, the court could either agree with the decision of

[33]Lee Marsons, *Bifurcation, Unification, and Calibration: A Comparison of Indian and English Approaches to Proportionality*, 1 Indian Law Review 26, 26-50 (2018).
[34]R. v. Minister of Agriculture, Fisheries and Food, Ex Parte Federation Europeenne de la Sante Animale, 6 (1991) 1 C.M.L.R. 507.
[35]*Supra* note 13.
[36]*Supra* note 34.

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the authority or ask the authority to offer proof in this respect. Deference can hence be said to be the degree to which the Judiciary asks the authority to offer proof in support of their decision.[37]

The degree of judicial restraint exercised by the court may be large, moderate or small, depending on the subject matter and nature of rights. Judicial restraint primarily becomes applicable in the fourth and final stage of the model. If the degree of restraint is large, the Judiciary will scarcely ever question the action of the administration; if the degree of restraint is moderate, the Judiciary will verify whether the benefit conferred by the legislation does in fact overweigh the violation of fundamental rights of the citizens and if the degree of restraint is small, the Judiciary will try to create a balance between restriction on the enjoyment of rights and attainment of the objective of the legislation and ensure that the decision of the administration is in fact the least intrusive means for the same.[38]

JUDICIAL INTERPRETATION OF DOCTRINE OF PROPOTTIONALITY IN INDIA

In the case of *Chintaman v. State of Madhya Pradesh*[39], the court stated that it always attempts to balance the fundamental rights of the citizens and the restriction that have been imposed while checking the constitutional validity of a legislation or an administrative decision.

The proportionality doctrine has been applied by the Supreme Court in various other cases as well:

In the case of *Hind Construction and Engineering Company Limited. v. Workmen*[40], few workmen were dismissed from service on the ground that they had not turned up for duty on a particular day. The court, in this case, opined that no reasonable employer would have imposed such an extreme punishment in this manner.

In the case of *Bhagat Ram v. State of Himachal Pradesh*[41], the court opined that if the punishment imposed is not proportionate to the gravity of the offence committed, then Article 14 of the Constitution of India would be infringed.

In the case of *Ranjit Thakur v. Union of India and Ors.*[42], the petitioner was sentenced to one-year rigorous imprisonment for an offence and later on dismissed from service when he declined to eat food while serving

[37]*Supra* note 28.
[38]*Id.*
[39]Chintaman v. State of Madhya Pradesh, AIR 1951 SC 118.
[40]Hind Construction and Engineering Company Limited v. Workmen, AIR 1965 SC 917.
[41]Bhagat Ram v. State of Himachal Pradesh, (1983) 2 SCC 422.
[42]Ranjit Thakur v. Union of India and Ors., (1987) 4 SCC 611.

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the sentence. The court, in this case, opined that the penalty imposed had been disproportionate to the gravity of the misconduct.

The same opinion was thereafter reiterated by the court in various other cases as well such as *Ex-Naik Sardar Singh v. Union of India and Ors.*[43] and *Federation of Indian Chambers of Commerce and Industry v. Workman, Shri R. K. Mittal*[44].

Though the court does not usually interfere or intervene in administrative decisions pertaining to quantum of punishment, it has done so in few cases such as *Dev Singh v. Punjab Tourism Development Corporation*[45].

In the cases of *Mani Shankar v. Union of India*[46] and *Coal India Limited v. Mukul Kumar Choudhari*[47], the court opined that administrative action must not be excessive.

In the case of *Union of India v. G. Ganayutham*[48], the court opined that as long as the fundamental rights of the citizens are not involved, the principle of Wednesbury unreasonableness would be applied.

In the case of *Omkumar v. Union of India*[49], the court observed that the proportionality doctrine would be applied to while judicially reviewing administrative actions that infringed Article 19 and Article 21 of the Constitution of India. It further opined that when an administrative decision was challenged as being arbitrary under Article 14, a primary review would be carried out using the proportionality doctrine.

The proportionality doctrine has also been recognised in various other cases such as *State of Uttar Pradesh v. Sheo Shankar Lal Shrivastava*[50] and *Indian Airlines Limited v. Praba D. Kanan*[51].

Thereafter, in the case of *Sadhuram v. Pulin Behari Sarkar*[52], the court opined that social justice must prevail over the technical rules in certain situations.

In the case of *Union of India v. S. B. Vohra*[53], the court opined that it would zealously guard human rights, fundamental rights and citizens' right of life and liberty in exercise of its power of judicial review.

[43]Ex-Naik Sardar Singh v. Union of India and Ors., (1991) 3 SCC 213.
[44]Federation of Indian Chambers of Commerce and Industry v. Workman, Shri R. K. Mittal, (1972) 1 SC 40.
[45]Dev Singh v. Punjab Tourism Development Corporation, AIR 2003 SC 3712.
[46]Mani Shankar v. Union of India, (2008) 3 SCC 484.
[47]Coal India Limited v. Mukul Kumar Choudhari, (2009) 15 SCC 620.
[48]Union of India v. G. Ganayutham, (1997) 7 SCC 463.
[49]*Supra* note 11.
[50]State of Uttar Pradesh v. Sheo Shankar Lal Shrivastava, (2006) 3 SCC 276.
[51]Indian Airlines Limited v. Praba D. Kanan, AIR 2007 SC 548.
[52]Sadhuram v. Pulin Behari Sarkar, AIR 1984 SC 1471.
[53]Union of India v. S. B. Vohra, 2004 (2) SCC 150.

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DOCTRINE OF PROPORTIONALITY IN THE INDIAN CONTEXT

The applicability of the proportionality doctrine in India was first discussed in the case of *Union of India v. G. Ganayutham*[54]. In this case, the Apex Court opined that the principle of Wednesbury unreasonableness would be followed in the country provided that the fundamental rights of the citizens had not been infringed. The court, however, did not make any comment with regard to the use of the proportionality doctrine in cases where the fundamental right of a citizen had been violated.

Thereafter, in the case of *Omkumar v. Union of India*[55], the Supreme Court recognised the proportionality doctrine in the Indian context and also realised that the doctrine had been applied in deciding the legitimacy of legislations, that infringed the fundamental rights guaranteed under Articles 14, 19 and 21 of the Indian Constitution, since the 1950s onwards though the doctrine had never been explicitly referred to by the court. The Supreme Court further held that in case of discriminatory or arbitrary administrative decisions violative of Article 14, primary review would be carried out on the basis of the proportionality doctrine whereas secondary review would be carried out on the basis of the Wednesbury unreasonableness principle. Additionally, the court opined that challenges that arose pertaining to service law would be subjected to secondary review and principle of Wednesbury unreasonableness as a result thereof because arbitrariness or discrimination under Article 14 would not be applicable in such a scenario.

Though the Apex Court in *Indian Airlines Limited. v. Praba D. Kanan*[56], *State of Uttar Pradesh v. Sheo Shankar Lal Srivastava*[57] and other subsequent cases opined that the ground for judicial review in India had moved from Wednesbury unreasonableness to proportionality, there has not been much improvement in the scope of review in the country because administrative orders sought to be reviewed predominantly pertain to arbitrariness or discrimination which does not come under the purview of the proportionality doctrine.

Though the Indian Judiciary did not provide any justification in the *Omkumar case*[58] for the principle of Wednesbury unreasonableness being associated with claims under arbitrariness or discrimination, there are two possible reasons for the same. The first being that Indian courts merely followed the example set by English courts, where proportionality and Wednesbury unreasonableness were made applicable in cases of

[54]*Supra* note 48.
[55]*Supra* note 11.
[56]Indian Airlines Limited. v. Praba D. Kanan AIR 2007 SC 548.
[57]State of Uttar Pradesh v. Sheo Shankar Lal Srivastava (2006) 3 SCC 276.
[58]*Supra* note 11.

infringement of convention rights and non-convention rights respectively.[59] Alternatively, the Indian Judiciary may have been apprehensive of the likely docket explosion that would be the consequence of enhancing the scope of judicial review in the country.[60]

However, multiple arguments may be raised in response to these justifications. Though there is a probability of an upward trend in the number of judicial review cases that would have to dealt with by the court if such a change is made, there is also a chance that the Legislature would become more responsible for their actions due to the possibility of them being held accountable having increased.[61] Furthermore, there is not much of a distinction nowadays in England between convention and non-convention rights where the proportionality doctrine is concerned.

Also, the Judiciary's supposition that administrative decisions which are discriminatory and arbitrary in nature will not infringe the fundamental rights of the citizens is not factually correct.[62] For example, if a public servant is given two weeks suspension for taking part in a religious gathering, then such suspension would be an infringement of his or her right to religion as well as right to assemble, both of which are fundamental rights. On the same lines, an administrative decision wherein a senior employee who possesses the requisite experience and qualification for a promotion is passed over in favour of a junior employee with similar experience and qualifications will be arbitrary or discriminatory in nature.

Furthermore, administrative orders would be sought to be reviewed in the court of law only if rights of citizens have been infringed and reaching a conclusion as to whether such right is fundamental or not is a time-consuming and tedious task on part of the Judiciary especially because of the wide ambit of Article 21 and other such fundamental rights.[63] The fact that there is a high probability that more than one right of the citizens have been violated further adds to the problem. The valuable time of the court could otherwise have been utilised in passing a balanced and well-thought judgment taking into consideration concepts such as judicial deference and judicial restraint.

The next dilemma faced by the Indian Judiciary is whether or not administrative decisions should continue to be reviewed on the basis of Wednesbury unreasonableness. The Legislature would not be subjected to the

[59]Abhishek Mour and Adarsh Tripathi, *English Concept of Judicial Review and Its Application to India: An Analysis in Light of Current Trends*, 2 National Law University Delhi Student Law Journal 1, 1-11 (2013).
[60]*Id.*
[61]Abhinav Chandrachud, *Wednesbury Reformulated: Proportionality and the Supreme Court of India*, 13 Oxford University Commonwealth Law Journal 191, 191-208 (2013).
[62]Alka G. Chavan, *Doctrine of Proportionality and Administrative Action with Reference to Human Rights in India*, 4 VSRD International Journal of Justice and Legal Studies 9, 9-12 (2018).
[63]*Id.*

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strict judicial review process necessary if the term arbitrariness is understood to connote unreasonableness as opined by the Supreme Court in the case of *Shrillekha Vidyarthi v. State of Uttar Pradesh*[64]. Substituting the proportionality doctrine for the principle of Wednesbury unreasonableness in such cases is hence the need of the hour.

Another question that needs to be answered in this respect is with regard to the model of proportionality to followed in the country. Though the Apex Court in various judgments has leaned towards the European model as opposed to the British model, no concrete decision has been made till date. The court, however, did opine that though the administrative authority had been conferred considerable amount of discretion, the Judiciary had also been given the power to decide whether or not such discretion was excessive or unnecessary.[65] Indian courts also have the power to pass judgement on whether the rights of the citizens had been violated or not, thereby placing reliance on the fair balance stage of the European model.[66] A possible reason for the same is that though the status of the proportionality doctrine in the Indian context has been hinted at in various cases, the doctrine in itself has hardly ever been applied.

Apart from the *Omkumar case*[67], the proportionality doctrine has been utilised in the true sense only in the case of *Sandeep Subhash Parate v. State of Maharashtra*[68]. In this case, a student was granted admission for Bachelor of Engineering in Government Engineering College, Pune on the basis of his representation, by means of a caste certificate, that he belonged to a Scheduled Tribe. This certificate was, however, subsequently invalidated by the Caste Scrutiny Committee on the ground that the Halba Community, of which he was a member, did not comprise a Scheduled Tribe. Though he completed his studies and also appeared for the necessary examination on the basis of the interim order that had been passed in his favour by the High Court, the Pune University refused to acknowledge his degree.

The High Court thereinafter held the university to be in the right. The Supreme Court, however, on the basis of the proportionality doctrine, instructed the university to grant the student an engineering degree on payment of one lakh rupees compensation in lieu of the education that had been conferred on him by them. Despite this, the decision of the Apex Court had been made in accordance to Article 142 of the Indian Constitution and it hence remains unclear even today how exactly the proportionality doctrine had been applied in the case.

[64]Shrillekha Vidyarthi v. State of Uttar Pradesh, AIR 1991 SC 537.
[65]Usha Antharvedi, Doctrine of Proportionality, JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS AND PRINCIPLES (Oct. 19, 2020, 5:30 PM), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1104955.
[66]*Id.*
[67]*Supra* note 11.
[68]Sandeep Subhash Parate v. State of Maharashtra, (2006) 1 SCC 501.

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CONCLUSION AND SUGGESTIONS

The Judiciary has the duty to respect the decisions of the Legislature. In this respect, it can be said that the proportionality doctrine does not seek to undermine the authority of the administration but rather to ensure that administrative actions are in consonance with the law so as to protect the rights of the citizens of the country. From the above analysis, it can be observed that usage of the Webnesbury unreasonableness principle is on a decline, in the present day, in the international context especially in countries such as the United Kingdom. The principle is now being substituted by the proportionality doctrine which ensures a proper balance between the factors that influence administrative decisions. The doctrine is also considered to be a more intense form of judicial review.

The proportionality doctrine has two models: the European model and the British model, out of which the European model can be said to be more effective and efficient. Though it has not yet been made clear which model India follows, Indian's preference for the European model has become apparent through the analysis of relevant cases laws. However, it is disheartening to note that even though the proportionality doctrine become part of Indian law nearly 20 years ago, there have not been any substantial or significant developments or changes in the doctrine in the Indian context till date. There are hardly any cases in India wherein the doctrine has been directly applied. In addition to this, the doctrine has been allowed only limited application in India though the Judiciary has been given considerable power in this respect. Due to the narrow approach followed, the doctrine has not been able to reach its full potential in the country.

Applying the proportionality doctrine to review administrative actions so as to safeguard human rights to the maximum level is hence the need of the hour. This is also a necessity for a better and brighter future in India. Additionally, as human rights and associated jurisprudence is fast gaining importance, the necessity of adopting the doctrine cannot be ignored. The following are some points that may be taken into consideration in this regard:

- The proportionality doctrine should be established in a proper manner and be applied by the Judiciary, as and when required, to curb administrative actions in cases wherein they outreach reasonability and instead become arbitrary or unreasonable.
- Proportionality-based review incorporating concepts such as judicial deference and judicial restraint must be adopted in India taking into consideration factors such as subject matter and nature of rights.

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- Supportive legal and political culture and generous approach towards interpretation of rights is required for the effective and efficient application of the proportionality doctrine in India. In addition to this, broader conception of law and democracy and shift in judicial attitude in this respect is also necessary.
- Progressive change in administrative culture is also suggested. This implies that the administrative authority must keep an open mind and also be prepared to consider if exceptions to general policy should be allowed in certain circumstances.
- It is also recommended that the Judiciary start invoking the proportionality doctrine in all cases involving rights of citizens irrespective of whether these rights are fundamental or ordinary in nature. Parameters may also be developed in this respect so as to cover every possible infringement of public and private right that is a result of administrative actions.