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**ABSTRACT**

The purpose of law in any society is to give power and to control the excess of that. It is an essential principle of law that power must be practiced inside the Four walls of law and the legal limit prescribed, more so when such a power is exercised at a discretion by an administrative authority. These powers are capable of being abused; hence, they have to undergo the acid test of judicial review. Earlier, the courts used to control only the extent and prerogative of the power exercised. But with the development of the principles through case laws, courts also started controlling the way in which such a power can be exercised by an administrative authority. Hence, with the quick development of administrative law and the need to control the misuse of discretion granted to the exercising authority, the courts have evolved various doctrines and principles that enable them to interfere in an administrative discretion when it is irrational, unreasonable or entails abuse of power. One such principle is the 'Doctrine of proportionality'. The doctrine of proportionality entails that an administrative decision, which is taken through the exercise of discretionary powers, must be in the extent to the consequences that follow from implementing such decisions.

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**ORIGIN AND DEVELOPMENT: FROM REASONABLENESS TO PROPORTIONALITY**

The ‘Doctrine of proportionality’ is a European origin. It is imbibed in the *European Droit Administratif* and is one of the most important legal principles in the ‘European Administrative Law’. In Britain, the ‘Principle of Proportionality’ has, for so long, been treated as a part of the *Wednesbury’s* principle<sup>2</sup> of unreasonableness which postulated the basic standard of reasonableness that ought to be followed by a public body in its decisions. It stated that if a choice is so unreasonable to the point that no sensible expert could ever take those actions or employ the methods adopted, then such activities are subject to be liable and quashed through judicial review.

Although the ‘Doctrine of Proportionality’ has been dealt with as a part of the *Wednesbury’s* principle, the Courts have adopted a different position when it comes to the judicial intervention in terms of judicial review. It has been held that the principle entails the reasonableness test with a heightened scrutiny.<sup>3</sup> In other words, to apply this doctrine, not only the decisions have to be within the limits of reasonableness, but only, there has to be a balance between the advantage and disadvantage in the outcome that has been achieved through the administrative action.<sup>4</sup> Therefore, the extent of judicial review is more intense and greater on account of ‘proportionality’ test than the ‘reasonableness’ test. Furthermore, the court while applying the rule of proportionality will think about the public and individual interest in the matter which is not done while applying the *Wednesbury’s* principle of unreasonableness

**INDIA: THE CONCEPT OF SHOCKINGLY DISPROPORTIONAL**

In India, the ‘Doctrine of Proportionality’ is not adopted in its broader sense as in case of its European counterpart. In other words, a restrictive application of the ‘doctrine of proportionality’ is done. The basic rationale of the restrictive application can be followed to the traditional common law system, wherein the courts are a secondary reviewer of the decisions taken by the administrative decisions. In the ‘Common law system’, the primary

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<sup>2</sup> The *Wednesbury’s* principle was laid down in *Associated Provincial Picture Houses v. Wednesbury Corporation*, 1 K.B. 223 (1948).

<sup>3</sup> *R v. Secretary of State for Home Department*, (2001) 2 A.C. 532 (India).

<sup>4</sup> Abhinav Chandrachud, *Wednesbury Reformulated: Proportionality and the Supreme Court of India*, 13 OXFORD U. COMMONWEALTH L. J. 191-208 (2013).

reviewers are the administrative tribunals who can go into the merits of the administrative actions. The courts only act as a secondary reviewer as they are not permitted to test into the merits and demerits of an administrative decision. Hence, the courts apply the Principle of proportionality in a restricted sense.<sup>5</sup>

**a) 'ARBITRARY' UNDER ARTICLE 14 OF THE INDIAN CONSTITUTION, 1950**

In India, the 'Principle of Proportionality' is applied as a part of the Article 14 of the Indian Constitution, 1950. In other words, the doctrine is applied as an aspect of arbitrariness in the administrative action under Article 14. Hence, when an administrative action is challenged as arbitrary, the *Wednesbury's* test of reasonableness and rationale is applied. Hence, if any action is arbitrary, i.e. unreasonable and irrational, then it could be struck down under Article 14. Hence, a very restrictive meaning of proportionality is applied when it comes to the administrative actions in pursuance of the discretionary powers conferred on the authorities.

The main area where the court has applied the proportionality principle is i.e. punishments and penalties, which means not only the 'Quantum of Punishment' has to be in proportion to the mischief done, but also the punishment has to be in consonance with the 'arbitrary' principle<sup>6</sup> as enshrined under Article 14. In other words, the courts will only interfere in the cases where the punishment is given is *strikingly disproportionate* to the mischief or misconduct was done by the individual.<sup>7</sup> The court interferes only where there is a '*prima facie*' case of irrationality.

In *Om Kumar v. Union of India*<sup>8</sup>, the Supreme Court explained the restrictive application of the 'Doctrine of Proportionality'. The court explained the principle that an administrative action can be questioned on the grounds of arbitrariness under Article 14 and the court cannot apply proportionality as a primary reviewer. The Hon'ble Court has to apply *Wednesbury's* principle as a secondary reviewer. In other words, the Hon'ble court could intercede in the administrative actions only when *Wednesbury's* principle is violated.<sup>9</sup> The same principle

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<sup>5</sup> Ajoy P.B., *Administrative Action and the Doctrine of Proportionality in India*, 1 J. OF HUMAN. & SOC. SCI. 20 (2012).

<sup>6</sup> As propounded by Justice Bhagwati first in the case of *E.P. Royappa v. State of Tamilnadu*, A.I.R. 1974 S.C. 555 (India) and reiterated in the case of *Maneka Gandhi v. Union of India*, 1978 S.C.R. (2) 621 (India).

<sup>7</sup> *Ranjit Thakur v. Union of India*, A.I.R. 1987 S.C. 2387 (India).

<sup>8</sup> A.I.R. 2000 S.C. 3689 (India).

<sup>9</sup> *Union of India v. R K Sharma*, A.I.R. 2001 S.C. 3053 (India).

was reiterated in *Canara Bank v. V.K. Awasthy*<sup>10</sup>, where the Hon'ble Supreme Court held that the courts cannot interfere into an administrative action on the grounds of being disproportionate unless it is a '*prima facie*' case of irrationality or perversity. It cannot be applied merely on compassionate grounds it considers the punishment disproportionate.<sup>11</sup> Higher standards of proportionality have to be followed.

The Hon'ble Court in various cases has intervened in the administrative decisions where the same was considered *prima facie* disproportionate to the mischief that was done by the individual. For instance, in *Sandeep Subhash Parate v. State of Maharashtra*<sup>12</sup>, the petitioner enrolled in a university on the ground of a caste certificate. Subsequently, his admission was invalidated, and the university refused to grant him a degree of engineering. The court while quashing the administrative action, redirected the university to impose a fine of Rupees one lakh on the petitioner as the punishment of the university was strikingly disproportionate to the mischief done by the petitioner.

## **b) FUNDAMENTAL RIGHTS**

The 'Principle of Proportionality' can also be made applicable in the cases where the restrictive state action is required to be proportional to the fundamental right that has been violated. In other words, the Principal is used to examine whether the restriction placed by the authority is a reasonable restriction for the exercise of fundamental rights as enshrined in the Indian Constitution in Part III. For instance, if any administrative action is affecting any of the fundamental freedoms as enshrined in the constitution from Article 19 and 21, then the doctrine if made applicable and the court act as a primary reviewer in such cases. In doing so, a balance has to be made between the fundamental freedom rights and the reasonable restrictions that are imposed by the constitution on the individuals on exercising those freedoms. Therefore, an administrative action or decision that imposes a restriction which is disproportionate or in excess to the fundamental rights could be struck down by the Hon'ble Court.

Moreover, if any administrative actions are challenged on the grounds of being discriminatory as laid down under Article 14 then the doctrine of proportionality applies, and

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<sup>10</sup> A.I.R. 2001 S.C. 3053 (India).

<sup>11</sup> Mubashshir Sarshar, *The Doctrine of Proportionality*, (Aug. 01, 2018, 10:00 AM), <http://works.bepress.com/mubashshir/20/>.

<sup>12</sup> (2006) 1 S.C.C. 501 (India).

the court becomes a primary reviewer. In other words, when an administrative action is challenged on the ground of being discriminatory as per Article 14, then the courts goes into the ‘merits and demerits’ of the action taken by considering whether the discrimination is excessive or not and whether the administrative act of discrimination has any nexus or relation with the purpose and objective desired to be achieved by the administrative authority. As stated by the Hon’ble Court in *Om Kumar v. Union of India*<sup>13</sup>, if any administrative action is to be struck down on the grounds of being discriminatory in nature under Article 14, then the proportionality principle applies, and the court becomes the primary reviewer.

### **CONCLUSION**

The Indian courts were given regulated power in the name of this doctrine. And the doctrine took a very narrow approach in its existence. But it is highly required that the doctrine should establish itself in its proper manner and should be applied in order to curb the actions of the administrative bodies in the chains of proportionality in the cases when they outreach the requirement of reasonability and came in the framework of arbitrary. Though it is the duty of court to respect the position of the administrative body, but it is important to analyse that that doctrine is not to undermine the position of any such administrative body but to regulate every action so that no action of anybody should be beyond the purview of the principles of law that are existing. This is not only for the development of the legal system of the country but also for the ‘Protection of the Rights’ of the citizens of the country.

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<sup>13</sup> *Supra* note 10.