



DOCTRINE OF PROPORTIONALITY IN INDIAN CONSTITUTIONAL JURISPRUDENCE: EXPANDING OR DILUTING RIGHTS?

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ABSTRACT

When the government says wide limits on freedom are needed for security, what path should a constitutional court take. In cases ranging from long term web blackouts in Kashmir to countrywide fingerprint tracking systems, courts now face choices about not just legality, but balance. One by one, these rulings show how proportionality has seeped into India's legal thinking. Yet beneath the surface grows a sharper doubt does this idea truly guard basic freedoms, or slowly fold them into routine acceptance of state power.

Years went by before Indian judges moved beyond a soft touch approach, stepping in solely if government moves seemed wildly unjustified. Only after the 2016 ruling in *Modern Dental College* did things truly start changing. That change took clear shape later in *K.S. Puttaswamy v. Union of India*, when top court justices adopted proportionality as their guiding method. From that point onward, how fairness is weighed now shapes rulings on matters like personal data, expression rights, commerce rules, along with openness in voting systems. Just on paper, it sounds strict. Though aiming at something real, its path must make sense. Because less intrusion is better, extremes get cut. When trade

offs happen, weight shifts between sides. Lately, added layers try to keep things in check.

INTRODUCTION

Suppose the state mandates a nationwide internet shutdown or launches a comprehensive surveillance system and labels the restrictions as reasonable, citing public security. Though the state may assert the necessity and validity of the action as serving public safety objectives, the fundamental rights to freedom of speech, privacy and liberty would inevitably stand infringed. Thus, a constitutional dilemma: how are the restrictions to be adjudicated reasonable and fair?

This adjudication, in present day constitutional democracies is guided by the doctrine of proportionality. Proportionality requires the courts to test if the aim pursued by the state is permissible, if the means adopted are rationally linked to the objective, if there is a less restrictive means to achieving the objective and if the benefits of the restriction outweigh the harms.¹ The proportionality doctrine thus differs from the reasonableness doctrine by demanding that a balance be structured between rights and state interests.

Indeed, comparative constitutionalists have described proportionality as an "almost ubiquitous fixture of contemporary rights adjudication", and at times, as the common 'constitutional grammar'² India was, however, tardy in adopting proportionality. For years, Indian courts used the *Wednesbury* rule of reasonableness of administrative decisions (derived from English law, which requires only for a decision to be outrageously unreasonable to be struck down) as the threshold for invalidating an action; a criterion that provided a rather limited check on rights- restrictive measures^{3 4}

¹ Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* 3–4 (2012).

² Moshe Cohen-Eliya & Iddo Porat, *Proportionality and Constitutional Culture*, 59 *Am. J. Comp. L.* 463, 465 (2011).

³ *Associated Provincial Picture Houses Ltd. v. Wednesbury Corp.*, [1948] 1 K.B. 223 (C.A.).

⁴ *Om Kumar v. Union of India*, (2001) 2 S.C.C. 386 (India).



A significant change came in *K.S. Puttaswamy v. Union of India* (2017) wherein the court affirmed privacy as a fundamental right and formally laid down a structural proportionality test that has now been accepted by Indian courts as a tool for testing infringements on constitutional freedoms⁵. Proportionality is, now a standard tool of constitutional analysis⁶. The doctrinal transformation raises, however, a fundamental concern. Is the promise of stronger rights enforcement under proportionality, through judicial oversight really attained, or rather will the balancing of rights and state interests inherent in proportionality tend to dilute them further by giving the court enormous discretionary power?

HISTORICAL DEVELOPMENT IN INDIA

For years, Indian judges wrestled with fitting personal freedoms into broader legal aims. At first, rulings insisted any law taking away life or freedom must follow a process that felt right, fair, actually worked seen clearly when Maneka Gandhi challenged the Union of India in 1978. That moment hinted at weighing costs versus gains, though the exact method known as proportionality stayed unnamed for ages. What emerged instead were ideas such as reasonable limits under Article 19, demanding each situation be judged on its own ground, never by fixed rules. A single study points out how, back in its earliest days, the Supreme Court saw that rules restricting rights needed to match those rights in scale. Still, it remained just a broad idea.

Things changed in India when judges looked at freedom rules through fresh eyes in 2016, during a case about a dental college. That ruling came from five top justices who pulled in ideas from foreign courts like Canada's Oakes method and thoughts by Aharon Barak to shape how limits on rights should be judged. Instead of just accepting any rule, they insisted it must aim at a fair goal, link clearly to that goal, do no more than needed, while still balancing impact versus

benefit. By then, even freedoms listed in Article 19 had to pass these layered checks before being restricted. Despite introducing a detailed test, the court stayed hesitant to apply it broadly. Right from the start, lawmakers were trusted to grasp what citizens actually require. Still, the idea of balance already hid within the concept of reasonableness under Article 19. That trust meant those questioning laws had to prove harm beyond doubt. One study points out how the judiciary repeated its faith in legislative insight during the *Modern Dental* case. Only when rights breaches stand obvious would courts step in to remove legal rules.

From the time of *Modern Dental*, ideas about balance have slowly taken clearer shape in India's constitutional rulings. During 2016 to 2018, judges brought up the principle in multiple major decisions, hinting at a move toward more organized scrutiny of rights. Still, certain observers note that today its use can feel loose, handled like a broad check on reasonableness instead of a careful step by step method. What follows looks closely at how the top court has put this idea into practice across pivotal cases.

Review of literature

The literature in the Indian constitutional space, surrounding the doctrine of proportionality is characterized by its praise, but also its reservations. For many scholars, it provides a rational and structured means of deciding cases in relation to fundamental rights, and has been a feature of all constitutional democracies. The decision to accept the doctrine formally in India was with *Modern Dental College* (2016) and has been solidified in *K.S. Puttaswamy* (2017). This has led to a formal transition in the doctrinal space of reasonableness to a formalized doctrine of balancing.

Proponents suggest that proportionality ensures a 'culture of justification', whereby the burden is placed

⁵ *K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1 (India).

⁶ Gautam Bhatia, *The Transformative Constitution and Proportionality*, 9 NUJS L. Rev. 1 (2016).



upon the state to prove its restrictions on rights through rational arguments and concrete evidence. The experiences of other countries like Germany and South Africa confirm that the doctrine can indeed ensure the protection of fundamental rights.

Criticisms of the application of the doctrine in India, on the other hand, point to the highly deference the court has given to the State particularly on issues of national security and economic regulation. Some refer to the application as a 'hollow promise', whereby the doctrine is clearly set forth, yet never rigidly applied.

KEY SUPREME COURT DECISIONS

Modern Dental College v. Madhya Pradesh (2016)⁷

At Modern Dental College in 2016, a top court reshaped how limits on Article 19 freedoms are judged. Justice A.K. Sikri, writing for most judges, broke down proportionality into four parts – valid goal, logical link, minimal intrusion, fair weight. That year marked a turning point: reasonableness under Article 19 now meant weighing proportionality. Yet despite embracing the framework fully, real scrutiny of every element stayed light. That ruling simply found the challenged limits on schooling matched the goal of regulation. Still, judges admitted they would not override lawmakers unless a rule clearly broke constitutional bounds[5]. So while Modern Dental brought in the standard, it also showed courts preferred to back down when laws stood firm.

Swamy against the nation's government⁸

What matters here is how the court handled criticism of India's old defamation law. Though some argued it clashed with free expression, judges looked back at earlier rulings like Modern Dental. Reputation counts, they noted – not just what people say. Because shielding someone's name serves a real purpose, jail

for slander stayed lawful. One point stood out: saying harmful things about others isn't protected talk. So Section 499 fits within fair limits, even if words carry weight. Still, the analysis skipped some key parts of proportionality – failing to say why civil options for defamation wouldn't work just as well[8]. Basically, even though Subramanian Swamy mentioned the standard, the ruling supported the law while skipping close scrutiny of milder choices.

Justice K.S. Puttaswamy (I) v. Union of India (2017)⁹

One day, nine judges together said privacy is protected by India's Constitution. While digging into where exactly that protection lives in legal text, they laid down rules future laws would have to follow. Not every judge wrote the exact same thing, but five of them – guided by Judge D.Y. Chandrachud – shared a clear view. When government limits someone's private life, one rule applies only if there's actual law backing it up. Another point matters too: such actions should serve fair goals found in open societies. The weight of what gets taken away must match what's being fixed. So the Court took hold of proportionality as its main guide. Still, what most judges did was keep things narrow – they just linked proportionality to the old "rational nexus" idea[10]. Then there's Justice Chandrachud's view, which gave space to lawmakers on goals, saying courts ought not challenge social choices, making the bar seem lighter. Another voice, Justice Kaul, agreed with the petitioners' three step method – close to Canada's Oakes rule – yet didn't spell out how it really changes anything[10]. Truth is, Puttaswamy (I) made reasoning matter more, demanding legality and balance, though in real terms, the approach stayed quite measured.

⁷ *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 S.C.C. 353 (India).

⁸ *Subramanian Swamy v. Union of India*, (2016) 7 S.C.C. 221 (India).

⁹ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India).



Justice K.S. Puttaswamy (II) / Aadhaar (2018)¹⁰

One way to see it the Aadhaar rulings questioned whether forcing people to give fingerprints and iris scans fits within basic rights. Four judges said yes, one judge firmly did not agree. Sitting together in 2018, they divided clearly along those lines. What stood out Justice Sikri backed parts of the law but trimmed certain pieces away. On another path entirely, Chandrachud rejected core elements outright. His reasoning? Simple. When power reaches deep into personal life, it must have strong justification. That bar wasn't met. Two sections fell under his scrutiny ones tying aid programs strictly to Aadhaar numbers. Why bring them down? Because requiring such data didn't pass fairness tests when simpler fixes could work just as well. Proof mattered here. Leaks in welfare systems often happened through fake records or false names, not missing IDs. So demanding biometrics made little sense as a fix all tool. Yet the main group, guided by Sikri, leaned toward restraint. He clearly laid out a four step check valid purpose, logical link, need, balance and noted doubts about such tests. Still, linking Aadhaar to state benefits stayed allowed because helping people live better counted as strong enough reason; using it in schools or shops did not fit within legal boundaries. Bhushan agreed, seeing proper logic behind the law. So across this long dispute, views split sharply: Chandrachud demanded tight scrutiny and cut back pieces, while others applied similar rules yet mostly backed what lawmakers had done, trimming only at edges.

Other Significant Cases

Some time after Puttaswamy, judges began using proportionality in many different cases. Take Anuradha Bhasin versus Union of India in 2020¹¹ there, courts looked at internet blackouts through the lens laid out in Puttaswamy, saying national security might justify limits, yet endless, sweeping cuts in

¹⁰ Justice K.S. Puttaswamy (Aadhaar-5J.) v. Union of India, (2019) 1 S.C.C. 1 (India).

¹¹ Anuradha Bhasin v. Union of India, (2020) 3 S.C.C. 637 (India).

Jammu crossed a line[16]. Later, during proceedings involving the Internet and Mobile Association of India against. In 2020¹², the RBI case saw the court weigh pandemic finance rules through proportionality.[17] A later ruling in 2023 scrapped electoral bonds because hidden donations clashed with voters' need to know who funds parties,[18][19] even if fighting black money was the goal. Yet in Noel Harper v. Union of India (2021)¹³, changes to foreign funding laws for NGOs stayed largely intact after partial legal trimming; observers noted the full proportionality check wasn't fully applied, leaning heavily on government reasoning instead.[20] From privacy to free speech, election norms to security demands, courts now touch many issues using this lens though results shift based on how each judge weighs personal freedoms against official intent.

DEFINING PROPORTIONALITY

Proportionality is best understood as a two part concept one part about balancing and one about necessity. In the fundamental rights context, courts typically ask: first, does the law serve a *legitimate public purpose*; and second, is it the *least restrictive means* of achieving that purpose. One Indian commentator explains that proportionality involves a "balancing test" (scrutinizing whether a law imposes excessive burdens or penalties) and a "necessity test" (requiring that any rights infringement be by the least restrictive alternative)[4]. In practical terms, modern Indian jurisprudence has broken this into a five prong framework[5]: Legitimate Aim: The restriction must pursue a genuine public interest (e.g., national security, public health)[5]. Suitability: The means chosen must actually help achieve that goal[5]. Necessity (Least Restrictive Means): If a different law or policy could achieve the same end while harming rights less, the chosen law fails this test[5]. Balance (No Disproportionate Impact): The benefits

¹² Internet & Mobile Ass'n of India v. Reserve Bank of India, (2020) 10 S.C.C. 274 (India).

¹³ Noel Harper v. Union of India, (2022) 10 S.C.C. 1 (India).



of the law must outweigh its cost to rights – a law that does far more harm than good is unconstitutional[5]. Safeguards: Adequate checks (like judicial review or reporting requirements) should exist to prevent misuse of the law[5].

Put simply, proportionality demands that government not use a sledgehammer to kill a fly. As one Indian commentator puts it, it aims to ensure authorities do not “kill a swallow with a cannon” – that is, to “maintain a sense of proportion” so no “excessive limits on individual liberty” occur[6]. When applied rigorously, it forces laws to be tailored and justified. For example, after *Anuradha Bhasin* (2020) recognized internet access as part of free speech and trade, the Court held each shutdown order *must satisfy each element* of the five prong test to be constitutional[7]. In theory, this can expand rights protection by making courts look closely at the evidence, inquire whether less drastic options exist, and require governments to explain themselves in public.

EVOLUTION IN INDIAN COURTS

Historically, Indian courts never explicitly used the modern proportionality analysis. But echoes of the idea appeared occasionally – for instance, the Court long insisted any right limiting law must “bear a proportionate relationship to the right” infringed[8]. Only recently did the Supreme Court articulate the full test. In *Modern Dental College v. Madhya Pradesh* (2016), the Court (while reviewing college fee regulations under Article 19) outlined a four part test. A five judge bench in *Puttaswamy II* (2018, the Aadhaar case) then picked the version of the test proposed by South African scholar Bilchitz, explicitly adopting proportionality as India’s standard procedure. By 2020-2023, the Court had formally included a fifth prong on safeguards[5]. Thus, the doctrine moved from the margins of case law to center stage in a few short years.

In practice, proportionality has been invoked in cases ranging from free speech and assembly to privacy and

trade. For example, in *Bhasin v. Union of India* the Court not only read the internet into Articles 19 and 21, but also declared that each subsequent internet shutdown must pass every step of the proportionality test[7]. Even public health and security measures have been scrutinized – courts have at times applied proportionality in cases like COVID 19 lockdown rules or electoral bans. When challenges arise, both High Courts and the Supreme Court now routinely demand that governments justify restrictions in terms of all five prongs. This framework has the potential to raise scrutiny on the state’s part.

Analytical viewpoints

United Kingdom (and ECHR) *Wednesbury*, where only wild logic could undo a decision. Then came 1998. The Human Rights Act wove Europe’s standards into national law. Now constraints on freedom must answer to democracy’s demands, tied firmly to valid goals. They also have to match the problem they tackle, nothing more than what fits. Strasbourg judges had already drawn lines: any curb needs strong cause, grounded in real societal urgency. Reasons offered must hold weight, connect directly, scale no higher than needed. Across recent rulings inside Britain, balance tests show up again and again – even if cloaked sometimes in older words about democratic necessity. In the European Union, limits on rights need legal backing. They also have to fit within what is fair and balanced. Rules restricting freedoms should serve real public goals. When such rules exist, they ought to match those aims well. A restriction cannot go further than needed. It must not wipe out the core of the right it touches. Weighing outcomes matters – gains shouldn’t bury personal freedoms. National laws aren’t free to ignore these boundaries. Courts check if measures stay within proper bounds. This scrutiny appears in rulings about basic rights. Lawmakers at the EU level face the same checks. The Court of Justice watches how far powers stretch. Balance isn’t optional – it’s built into the system. Each limit gets tested, not assumed valid. What looks like protection might still cross a line. Even urgent interests can’t justify hollowing out rights completely.



What stands behind Germany's legal limits on rights? A deep rooted rule called proportionality shapes decisions. Not just any goal will do authorities must show their aim matters. They also need a method allowed by the Constitution. That method should actually help reach the stated goal. If milder options exist, stronger ones won't pass. Even if everything else fits, the cost to personal freedom can't outweigh public benefit. Judges weigh each part carefully. Over time, they've struck down several laws failing this test.

It starts with the U.S. Constitution nowhere does it name a proportionality test outright. Courts step in differently each time, shifting how closely they examine laws. At the top level, called strict scrutiny, what the government does needs a vital reason and has to fit precisely like a custom cut key. That part feels familiar to the idea of using only the least limiting way possible, which matters deeply in proportionality[24]. Mid level review, like what happens with gender rules, needs a solid reason plus methods that clearly connect to it. Instead of calling everything proportional, U.S. legal thinking still shows signs of weighing limits carefully just without saying so outright. Regular basic checks care less about fit; they accept any believable goal someone might claim. You can spot this balancing act hiding inside things like "narrow tailoring," which acts like a lighter version of full proportionality. That idea, tied to tough standards, means laws must not go beyond what's needed. As one observer points out, the system already avoids excessive harm through such tools even though judges skip formal cost and effect math found elsewhere.

ACADEMIC DEBATE: GUARDRAIL OR RUBBER STAMP?

The academic literature on proportionality is divided, and much of that debate is now entering the Indian context. One school of thought treats proportionality as a descriptive tool: it shows how judges can break a complex question ("is this law fair?") into structured sub questions. Scholars like Robert Alexy argue that in theory, the test leads to reasoned decisions judges

must publicly justify each step of the analysis. Another view is normative: proportionality is seen as an embedding of constitutional values (like human dignity and democratic dialogue) into adjudication. Proponents claim it can guard against abuses of power: for instance, it requires lawmakers to explain themselves and to consider marginalized voices, thus acting as a bulwark against tyranny of the majority. In India, as commentators point out, the idea is that proportionality could foster a "culture of justification" in the judiciary[9], forcing courts to justify restrictions rather than rubber stamping them.

Critics of proportionality, however, are worried it might dilute rights if applied weakly. Some argue that adding another layer of scrutiny can allow judges to defer more easily. In India, many analysts observe, the courts still start with the premise that they are not evaluating policy wisdom but only legality. In *Directorate of Film Festivals v. Cine Lovers* (2007) the Supreme Court famously said it would not "act as [an] appellate authority examining the correctness, suitability and appropriateness of a policy," focusing only on its legality[10]. If that deferential attitude persists, proportionality might become window dressing. Indeed, one commentator notes the Court often acts as if proportionality "has always existed in Indian constitutional jurisprudence," so adopting a formal test means doing "nothing very different"[11]. Empirical studies suggest that's not just theoretical pessimism. A recent law review paper calls proportionality a "hollow promise" in India, finding that judges frequently apply it in form but not in substance[12]. For example, in *Modern Dental College*, the Court on paper went through the balancing inquiry but then bluntly held the state's fee policy was "warranted in the larger public interest" without any data to show alternative measures were considered[13]. Similarly, in the Aadhaar case the Court claimed to follow a detailed test but simply accepted the government's claim that no less intrusive method was available essentially taking the executive's word for it and "defeating the very rationale" of the inquiry[14]. Such criticism points out that if courts do not diligently check each prong,



proportionality can easily collapse into the old, highly deferential standard.

On the flip side, advocates argue proportionality *could* sharpen rights protection. For instance, the very existence of the test means governments must at least articulate legitimate aims and consider alternatives. In principle, it can ensure *transparency* in lawmaking. As one analysis puts it, the whole point of proportionality is to prevent authorities from choosing extreme means: it “ensures administrative action does not put excessive limits on individual liberty”[6]. In other jurisdictions, proportionality has indeed led to invalidation of overbroad laws (in Germany and South Africa, say) or more robust remedies for constitutional rights. Indian scholars suggest it could similarly compel attention to social context for example, ensuring that restrictions on speech include hearing affected communities or that surveillance laws incorporate privacy safeguards.

The reality so far is mixed. There are instances where courts have struck down restrictions as disproportionate, especially in recent years for example, some internet shutdown orders have been curtailed. But there are also glaring examples where proportionality has shrugged and restrictions stood. The literature notes that the Court’s attitude often remains one of deference. In the words of one commentator, the pre existing framework in India “is highly deferential to the state,” and proportionality has so far been “assimilated” into that framework[11][10]. In other words, the revolutionary potential of proportionality to reshape relations between citizen and state has been “limited” by how the courts treat it[11].

Comparative studies reinforce this caution. In many Western countries, proportionality is indeed central and has engendered debates about democracy, dignity, and justice. A South African scholar notes that in his country’s Bill of Rights, proportionality is now a “prominent feature” of limitation clauses[15]. The point is that proportionality’s spread is global it appears in case law around the world as an almost

universal test[1]. How it works out depends heavily on local legal culture. Indian courts, like some others, have inherited a tradition of deference; unless that changes, proportionality may not automatically give citizens more protection.

CONCLUSION

Proportionality in Indian law is a sword whose edge has yet to be fully sharpened. On one hand, it marks a shift toward a more reasoned, value driven analysis of rights. In theory, every law limiting rights now must justify itself step by step, which could expand and entrench rights by demanding accountability. On the other hand, early signs suggest the test often ends up a formality: courts still say they won’t re weigh policy wisdom, and empirical research finds many restrictions slipping through on shaky justifications. As one critic puts it, with inconsistent application the doctrine risks becoming “only in form” rather than substance[12].

So does proportionality expand or dilute rights in India? The answer seems to be: it has the *potential* to expand rights, but that potential will be wasted unless courts use the test meaningfully. Right now, many analysts worry it has been more diluting than empowering a new label on the same deferential review. To avoid that, judges will need to transform their approach, not merely add a step by step ritual. In short, the “culture of justification” must eventually take root if proportionality is to truly reshape Indian constitutional law; otherwise it may remain a hollow promise rather than a bulwark of fundamental rights[12][11].

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