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Doctrine of Proportionality in India: Culture of Justification or Culture of Deference?

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ABSTRACT

*The doctrine of proportionality has emerged as the dominant framework for adjudicating limitations on constitutional rights, and its rise is closely associated with the transition from a culture of authority to a culture of justification, in which every exercise of public power must be supported by reasoned argument. This paper argues that the Indian Supreme Court's proportionality jurisprudence embodies a structurally hybrid pattern of adjudication that combines the form of structured justification with the substance of discretionary reasoning and the absence of a coherent burden-shifting rule. Drawing on the theoretical foundations of proportionality and on critical scholarship, the paper traces how Indian courts have merged proportionality with pre-existing standards of reasonableness rather than adopting it as an independent justificatory framework. Through an examination of decisions including *Modern Dental College & Research Centre v. State of Madhya Pradesh*, *K.S. Puttaswamy v. Union of India*, *Anuradha Bhasin v. Union of India*, and *Sunil Kumar Singh v. Bihar Legislative Council*, it shows that proportionality in India often functions as a legitimising language rather than a genuine constraint on State power, producing an illusion of justification. The paper concludes that the transformative potential of proportionality rests not on its formal adoption but on whether courts internalise its justificatory discipline.*

Keywords: *Proportionality, culture of justification, judicial deference, constitutional rights, Indian Supreme Court, standard of review, burden of proof.*

I. INTRODUCTION: PROPORTIONALITY AND THE CULTURE OF JUSTIFICATION

The doctrine of proportionality has emerged as the dominant framework for adjudicating limitations on constitutional rights. It provides the means to balance the relationship between individual rights and the power of the State through a logical and reasoned process of justification, requiring any limitation to be supported by a legitimate aim, to use rational methods, and to strike a proportionate balance between conflicting interests.¹

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¹ Aharon Barak, *Constitutional Rights: Scope and the Extent of Their Protection*, in *PROPORTIONALITY: CONSTITUTIONAL RIGHTS AND THEIR LIMITATIONS* 19 (Doron Kalir trans., Cambridge Univ. Press 2012).

This development goes hand in hand with a major transformation in constitutional governance, from the culture of authority to the culture of justification, whereby every use of public power must be justified by a well-considered line of reasoning.² Proportionality plays a leading role in this change, as it is the method by which courts decide whether restrictions on rights are legitimate.

The normative promise of proportionality nonetheless remains disputed. Some commentators praise it for making decisions more reasonable and legislation more transparent. Critics, on the other hand, warn that by placing rights on a scale and permitting them to be balanced against other interests, their strong normative force may be weakened.³

Moreover, the adoption of proportionality does not guarantee the emergence of a culture of justification. The way in which courts internalise and implement its justificatory discipline determines its impact. This is precisely the point of tension that is evident in the Indian context. Although the proportionality doctrine has been formally adopted in India, its application reveals clear discrepancies in both structure and method.⁴

This paper argues that the framing of the Indian Supreme Court's proportionality jurisprudence embodies a structurally hybrid pattern of adjudication. The hybrid model in question combines the form of structured justification, the substance of discretionary reasoning, and the absence of a coherent burden-shifting rule. As a result, proportionality creates the impression of constraint while at the same time opening the way for judicial discretion, thereby weakening its role as a mechanism of justification.

In contemporary constitutional scholarship, proportionality is identified as the dominant method of rights adjudication and is often linked to a culture of justification, in which every public decision must be supported by a well-reasoned argument. Within this framework, courts examine whether a limitation on a right is rationally connected to a real and legitimate goal, whether the limitation is essentially the only way to achieve that goal, and whether the loss of the right is not excessive when compared with the public benefit secured. In this way, proportionality offers a blueprint for judicial decision-making and also signifies a deeper commitment to justification in constitutional adjudication. However, the promise that proportionality will invariably justify restrictions on rights has been challenged by several scholars.

² Moshe Cohen-Eliya & Iddo Porat, Proportionality and the Culture of Justification, 59 AM. J. COMP. L. 463, 465-66 (2011).

³ Kai Möller, Proportionality: Challenging the Critics, 10 INT'L J. CONST. L. 709, 712-14 (2012).

⁴ Aparna Chandra, Proportionality in India: A Bridge to Nowhere?, 3 U. OXFORD HUM. RTS. HUB J. 55, 57-58 (2020).

Tarunabh Khaitan argues that, for proportionality to succeed in practice, any restriction on rights must be supported by special reasons, and that its effectiveness depends on the intensity of judicial scrutiny applied to such justifications.⁵ Where judges adopt a deferential approach, the doctrine may lose its power to detect violations that cannot subsequently be justified.⁶ The question of the burden of proof therefore becomes central, because a genuine framework of justification requires the government to prove that its actions are both necessary and proportionate.

A further criticism concerns the vagueness of proportionality, especially at its balancing stage. Grégoire Webber takes the view that balancing may allow judges to conceal their personal preferences or biases behind the mask of a logical and well-structured line of reasoning.⁷ On this view, proportionality may serve to justify rulings that in fact rest on judicial discretion rather than to constrain such judgments. Within the Indian context, these difficulties become even more complex because of the way proportionality interacts with pre-existing doctrines of review.

Abhinav Chandrachud points out that, although the Supreme Court frequently invokes the proportionality doctrine, its reasoning in most cases still follows the older standards of reasonableness.⁸ Rather than displacing the existing approaches, proportionality has blended into them, and this doctrinal overlap raises the question of whether it is capable of bringing about fundamental change.⁹ Both empirical and doctrinal studies of Indian case law support this concern.

Aparna Chandra highlights that the Supreme Court's use of limitation analysis is not only inconsistent but also lacks methodological clarity, particularly at the necessity and balancing stages. Although proportionality is often mentioned in discussion, it is not always implemented thoroughly, which leads to an inconsistent and fragmentary jurisprudence.¹⁰ Taken together, this body of writing uncovers a deeper contradiction. Even though many scholars recognise proportionality as a feature of modern constitutionalism, its real strength lies in its institutional implementation and, above all, in the exercise of judicial discretion.¹¹ In the Indian experience

⁵ Tarunabh Khaitan, *Beyond Reasonableness: A Rigorous Standard of Review for Article 15 Infringement*, 50 J. INDIAN L. INST. 177, 181-84 (2008).

⁶ *Id.* at 188-92.

⁷ Grégoire C.N. Webber, *Proportionality, Balancing, and the Cult of Constitutional Rights Scholarship*, 23 CAN. J.L. & JURIS. 179, 183-85 (2010).

⁸ Abhinav Chandrachud, *Wednesbury Reformulated: Proportionality and the Supreme Court of India*, 13 OXFORD U. COMMW. L.J. 191, 200-02 (2013).

⁹ *Id.* at 204-05.

¹⁰ Chandra, *supra* note 4.

¹¹ *Id.* at 59-61.

in particular, the adoption of the proportionality doctrine does not necessarily lead to a culture of justification; rather, a mixed system may develop in which systematic justification coexists with decisions made by judges at their discretion.

II. THEORETICAL FOUNDATIONS OF PROPORTIONALITY

Proportionality is grounded in a distinction between the scope of a constitutional right and the extent of its protection.¹² At the initial stage, rights are described very broadly; only later are their limitations explored and justified. This logical progression ensures that restrictions are not treated as part of the right by default, but must instead be justified separately and thoroughly. The framework is further supported by the conception of rights as principles. Principles need not be implemented fully; they can be attained to different degrees and require an act of balancing, unlike rules, which operate in a black-and-white manner and allow no flexibility. Balancing is therefore naturally regarded as the foremost technique of decision-making.

Rights are defined broadly at the first stage and limited only subsequently through a justificatory analysis. In this way, limitations are not automatically seen as inherent in the right, but must be independently justified.

This perspective is supported by the conception of rights as principles. Unlike rules that operate in a black-and-white fashion, principles must be optimised and may be only partially fulfilled. As a result, balancing becomes the principal method of decision.¹³

Balancing is typically described as a logical and systematic way of reaching legal decisions.¹⁴

This statement nonetheless deserves closer examination. Converting differing values into a well-organised system of evaluation does not eliminate judicial discretion; it merely relocates it within the reasoning of the judges. The language of optimisation can sometimes conceal the degree to which results are shaped by earlier normative commitments, allowing justifications offered after the fact to be presented as genuine constraints. In addition, the discourse-theoretic conception of rights situates proportionality within a wider framework of public reasoning. Fundamental rights are understood as normative claims that must be justified in ways comprehensible within a constitutional democracy.¹⁵ Judicial reasoning should therefore display not merely the power of the court but also the reasons that justify that power.

¹² Barak, *supra* note 1, at 26.

¹³ Barak, *supra* note 1, at 26.

¹⁴ Barak, *supra* note 1, at 26.

¹⁵ Robert Alexy, Discourse Theory and Fundamental Rights, in *ARGUING FUNDAMENTAL RIGHTS* 15, 20-22 (Agustín José Menéndez & Erik Oddvar Eriksen eds., Springer 2006).

These theoretical bases establish proportionality as a method of justification. Nevertheless, they also reveal its difficulty. On the one hand, proportionality seeks to limit power through reason; on the other, because it depends on balancing, it makes available a discretion that is itself capable of defeating that very aim.

III. PROPORTIONALITY AND THE CULTURE OF JUSTIFICATION

The rise of proportionality is deeply associated with the emergence of a culture of justification, on which a State action can be considered legitimate only if it can be justified through reasoned argument.¹⁶ Proportionality assists this process of justification by dividing judicial review into distinct stages. This typically involves identifying a legitimate aim, assessing a rational connection, evaluating necessity, and finally testing proportionality in the strict sense.¹⁷

At each stage, the State is required to meet a higher standard of proof, so that limitations on rights are kept under strict examination. The model also goes beyond procedural legality and opens outcomes to substantive evaluation. Proportionality thus operates as an additional source of constitutional legitimacy that supports democratic decision-making by making rights-based justification a necessity.¹⁸

A culture of justification does not, however, operate by itself. The giving of reasons is not the same as those reasons being reasonable. If courts are unwilling to subject justifications to careful examination, the proportionality exercise becomes merely formal and loses its power to serve as a genuine constraint.¹⁹ In such circumstances, the doctrine is likely to create a mirage of justification without substantially limiting power.

IV. PROPORTIONALITY, DEMOCRACY, AND JUDICIAL DEFERENCE

Another perspective emphasises that proportionality is not only a limitation on State power but also a method of control, by which the interaction between judges and democratically elected legislatures is regulated.²⁰ On this view, proportionality is the means by which higher courts accord some weight to the legislature's decisions, thereby taking democratic concerns into account. It thus allows judges to respect the separation of powers while conducting a thorough examination.

¹⁶ Cohen-Eliya & Porat, *supra* note 2, at 468-70.

¹⁷ Möller, *supra* note 3, at 718-20.

¹⁸ Stephen Gardbaum, Proportionality and Democratic Constitutionalism, in *PROPORTIONALITY AND THE RULE OF LAW: RIGHTS, JUSTIFICATION, REASONING* 259, 261-63 (Grant Huscroft, Bradley W. Miller & Grégoire Webber eds., Cambridge Univ. Press 2014).

¹⁹ Cohen-Eliya & Porat, *supra* note 2, at 471.

²⁰ Gardbaum, *supra* note 18, at 263.

This very flexibility, however, raises a significant dilemma. A deferential stance by the courts may render proportionality unable to check State power effectively. The success of the doctrine therefore depends largely on how closely the courts scrutinise the matter and how the responsibilities for providing reasons are distributed. The tension between justification and deference is, accordingly, a feature of proportionality itself.

V. THE INDIAN EXPERIENCE: A HYBRID MODEL OF PROPORTIONALITY

The Indian Supreme Court's engagement with proportionality exemplifies a global trend in which many jurisdictions move towards more structured ways of adjudicating rights. In various legal systems, proportionality is used as a method of judicial review based on reasoned justification, so that the government is expected to explain and justify any measure restricting rights through an in-depth examination. India's narrative is nonetheless different. On paper, proportionality has been introduced, but in its actual application its understanding and implementation are inconsistent. Instead of operating as a new and independent framework for justification, proportionality has been merged with the older methodologies of rights adjudication.²¹

This merger has implications for how the doctrine works. The phenomenon can be better understood through the lens of standards of review in rights adjudication. As has been argued, the effectiveness of a justification-based framework depends not merely on the formal articulation of doctrinal steps, but on the intensity with which courts scrutinise State action and the clarity with which justificatory burdens are allocated.²² In a fully developed proportionality analysis, the burden lies on the State to demonstrate that a restriction is necessary and that no less restrictive alternatives are available.²³ Where courts adopt a deferential posture or fail to enforce this burden clearly, however, the justificatory structure loses much of its disciplining force. In such circumstances, proportionality risks collapsing into a form of low-intensity review, in which the language of justification is retained but its substantive rigour is diminished. This provides a useful framework for understanding the Indian position, where the persistence of deferential review and the absence of consistent burden allocation contribute to the emergence of a hybrid model.

The proportionality test is ordinarily a gradual and stepwise method, in which each step operates as a separate barrier that constrains the government. In India, however, the different stages of the test are so closely interconnected that judges sometimes invoke the test by name without

²¹ Chandra, *supra* note 4, at 58-59.

²² Khaitan, *supra* note 5, at 181-84.

²³ Khaitan, *supra* note 5, at 188-92.

offering a detailed analysis of its components. The doctrine therefore does not displace the older standards of review; rather, they persist together and produce a mixed form of judicial decision-making that combines reasoned analysis with an element of decision by will.²⁴ This blending of styles diminishes the transformative impact that proportionality could otherwise have.

A major element of this situation is the uncertainty over who bears the burden of proof. When proportionality is fully developed, the government must prove that the restriction of rights satisfies each part of the test, including that no less harmful alternatives exist. Indian judges are not always clear and consistent in allocating this burden. Statements about governmental aims are often taken at face value and are not required to be supported by substantial evidence, especially at the necessity stage. This diminishes the disciplining role of proportionality and allows the government to satisfy the test without offering any genuine justification.²⁵

Closely related is the disagreement over the intensity of judicial scrutiny. How closely the courts examine the components of proportionality is decisive for the success of the test. In India, the rigour of review varies considerably: courts sometimes conduct detailed investigations and sometimes take more deferential routes. This erratic practice weakens the coherence of the doctrine and makes cases resemble the older reasonableness review rather than a thorough proportionality analysis.²⁶

These features naturally give rise to a form of proportionality that is methodologically loose. On the surface, the doctrine follows the usual template, but in practice its implementation is markedly different. The result is a body of law that outwardly appears to conduct structured review while substantially preserving judicial discretion. Moreover, the absence of clearly defined standards allows the courts to invoke proportionality without binding themselves to a firmly justificatory framework. Such defects are often attributed solely to doctrinal confusion, but that is not the full explanation. Explanations grounded in institutional choices go further than merely identifying a motive. The Court is reluctant to impose justificatory burdens forcefully, thereby revealing a preference for the possibility of changing its position rather than being tied down. The application of proportionality is kept deliberately vague, so that the Court retains the power to alter its reasoning from one case to another without a strict analytical structure.²⁷

²⁴ Chandra, *supra* note 4, at 59-60.

²⁵ Chandra, *supra* note 4, at 60-61.

²⁶ Chandra, *supra* note 4, at 61.

²⁷ Chandra, *supra* note 4, at 61-62.

In this light, deference is not merely a consequence of the Court's behaviour but a fundamental element of the way proportionality is used in India. The doctrine is invoked, but its power to compel change is diluted in practice. In this way, the Court can rely on the prestige of proportionality while retaining the discretionary room familiar from earlier modes of review. The Indian case study thus reveals a particular model of proportionality that combines the external appearance of structured justification with the internal character of discretionary adjudication. The hybrid model does not destroy proportionality, but it transforms it. It uses the language of the doctrine while altering its function. Instead of a tool for thoroughly constraining governmental power through justification, it becomes a system in which judges can exercise and rationalise their discretion.

VI. PROPORTIONALITY WITHOUT CONSTRAINT: THE ILLUSION OF JUSTIFICATION

The Indian experience indicates that the mere adoption of proportionality has not reliably given rise to a culture of justification. In many cases, it ends up as a form of justification without constraint, in which courts refer to the proportionality framework yet do not rigorously apply its disciplinary features. This divergence is visible from the very first use of proportionality. In *Modern Dental College & Research Centre v. State of Madhya Pradesh*, the Supreme Court set out a definite four-stage proportionality test comprising a legitimate objective, a rational connection, necessity, and balancing.²⁸

The Court nonetheless did not strictly enforce the sequential discipline of the proportionality test, especially the necessity requirement, which limited its capacity to operate as a structured justificatory constraint. The gap between the formal recognition of proportionality as the criterion for scrutinising limitations on fundamental rights and its enforcement was equally pronounced in *K.S. Puttaswamy v. Union of India*.²⁹ On the one hand, the decision draws attention to the necessity of justification; on the other, it leaves ample room for judicial discretion within a seemingly well-structured framework. This forms part of a larger trend in which proportionality is portrayed as a tool of justification yet is not accompanied by a clearly established standard of review or level of scrutiny.

The gap between form and use becomes clearer in later cases. In addressing internet access restrictions in *Anuradha Bhasin v. Union of India*, the Court invoked the idea of proportionality but, because it did not genuinely examine necessity or test for less restrictive alternatives,

²⁸ *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353 (India).

²⁹ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).

reduced proportionality to a mere formal reference.³⁰ The decision exemplifies how proportionality can be acknowledged at the formal level yet not genuinely exercised at the substantive level.

Similar lines of development can be traced in very recent rulings. In *Sunil Kumar Singh v. Bihar Legislative Council*, the Court relied on the concept of disproportionality as a ground for invalidating a legislative expulsion. The Court's reasoning, however, did not resemble an exhaustive, step-by-step proportionality analysis.³¹ The example shows that, even in recent law, proportionality is viewed less as a strict doctrinal test than as an evaluative standard that can be adjusted.

Read together, these cases illustrate that proportionality in India operates as a hybrid model in which the formal structure of justification coexists with the persistence of discretionary reasoning and weakly enforced justificatory burdens. The concept of proportionality, despite being formally recognised, has been applied inconsistently and at times very leniently. Herein lies one of its potential consequences, which may be characterised as an illusion of justification, in which a well-structured, rational review visually predominates while judicial discretion nonetheless persists. Proportionality therefore operates less as a constraint on State power than as a legitimising framework through which judicial outcomes are rationalised.

This is not to say that proportionality is inherently defective. As has been pointed out, arguments against proportionality tend to mistake faults in its implementation for flaws in the principle itself.³² On the contrary, the Indian situation reveals that proportionality is a flexible vehicle that can be used to support both arguments for justification and arguments for deference. Such elasticity, unfortunately, comes at a price. Because it allows the courts to present a constrained appearance while remaining, in practice, unconstrained, proportionality ends up undermining its own normative goal.

VII. CONCLUSION

The use of proportionality to mediate between constitutional rights and State interests is widely accepted as a major characteristic of contemporary constitutional adjudication. It is regarded as a central element of the culture of justification, both because of its theoretical basis and because of its normative goals. The Indian situation nonetheless reveals that the mere implementation of proportionality does not produce such a culture. On the contrary, it has created a mixed

³⁰ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637 (India).

³¹ *Sunil Kumar Singh v. Bihar Legislative Council*, (2025) INSC 264, 2025 SCC OnLine SC 178 (India).

³² Möller, *supra* note 3, at 721-22.

system in which justification and deference are two sides of the same coin. This system allows judges to retain a substantial say while purporting to constrain their power through law. Proportionality functions primarily as a language of justification, but it does not consistently operate as a mechanism of constraint. Ultimately, the transformative power of proportionality rests on the manner of its use. Where courts do not make its justificatory discipline their own, the idea of justification remains a matter of words while lacking substance.
