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## Critical Analysis of the Doctrine of Proportionality: A Case Study of Demonetisation

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*This paper undertakes an examination of the Doctrine of Proportionality, a fundamental legal principle, with a specific focus on its application within the context of the case of *Vivek Narayan Sharma v Union of India*. The primary objective of this academic inquiry is to assess the legitimacy and precision of the guidelines provided by the Supreme Court in the context of proportionality analysis. This study aims to offer a comprehensive analysis of the court's judgment and the subsequent consequences it carries. Through an in-depth exploration of the proportionality test, this research seeks to shed light on the evolving dynamics of this doctrine and its potential to adapt and influence decision-making processes within legal proceedings. The overarching goal is to enhance comprehension of the Doctrine of Proportionality and its practical implications within the framework of the Indian legal system. This will be achieved by a thorough examination of relevant legal precedents and foundational doctrinal principles.*

**Keywords:** *doctrine of proportionality, demonetisation, fundamental rights, proportionality, reasonableness.*

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### INTRODUCTION

The Doctrine of Proportionality holds significant importance in the realm of Administrative Law and plays a crucial role in the process of judicial review. The implementation of this principle requires the construction of a strong connection between the intended result and the methods

used to achieve it. It functions as a crucial method for resolving the divergent interests of different stakeholders involved in a legal conflict. Judicial authorities frequently employ the practise of closely examining the legality and legitimacy of activities undertaken by the government. It is anticipated that such acts should avoid displaying a significant level of disproportionality, as determined by the adjudicating body, as they may be subject to thorough court examination.

The principle of proportionality is deeply embedded in multiple legal fields, particularly constitutional and administrative law, as it offers direction for the use of governmental authority in relation to persons. The historical roots of this uncodified constitutional idea can be traced back to the German Constitutional Courts, which have a strong foundation in German public law. The notion in question was originally articulated by the Prussian Supreme Court in the realm of police legislation. This may be seen in Georg Jellinek's statement, which argues against the use of cannons by the police to eliminate a swallow, deeming it unacceptable. Essentially, this principle asserts that any restriction on individual freedom must be consistent with the underlying grounds that warrant such actions. The implementation of limitations on individual autonomy needs to be carried out in a manner that imposes the least possible infringement upon personal freedoms, thereby aligning with the principles of rationality. As a result, all legislative and administrative measures continue to be subject to examination in accordance with constitutional principles.<sup>1</sup>

The Doctrine of Proportionality emphasises the need to ensure that administrative activities do not exceed what is necessary to accomplish their stated goals. A crucial concept encompassed within this framework is the necessity of precisely adjusting administrative operations in order to achieve desired consequences.

The Hazara Singh v Raj Kumar<sup>2</sup> case exemplifies the notable importance of equitable sentences. This statement emphasises the crucial need to align the severity of sentencing with the unique

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<sup>1</sup> Namita Vashishtha, 'Principle of Proportionality: Extent and Application in Industrial Disputes' (2018) 1 Shimla Law Review <<https://hpnlu.ac.in/PDF/20dba562-1da4-4748-878b-dabbeec715ed.pdf>> accessed 20 September 2023

<sup>2</sup> *Hazara Singh v Raj Kumar* (2013) 9 SCC 516

characteristics and seriousness of the committed offence. The utilisation of a benchmark to determine proportional sentencing serves as a guiding principle, driving the process of judicial decision-making towards fair and unbiased judgements.

The Supreme Court, acting as the highest judicial body, issued a verdict in the case of Vivek Narayan Sharma (Demonetization Case-5 J.) v Union of India<sup>3</sup>, regarding the Demonetization of cash denominations of Rs 500 and Rs 1,000. The result was reached with a majority of 4-1. The primary focal point of this ruling centres on the utilisation of the proportionality assessment.

In contrast, Justice Nagarathna offered another viewpoint. The justice contended that the government's power to issue a notification under Section 26(2) hinged upon the commencement of a proposal for the demonetization of a particular series of banknotes by the Central Board of the Reserve Bank of India (RBI), which is carried out through a formal process of recommendation.

In addition, Justice Nagarathna's examination concluded that the Central Board had not adequately and fairly evaluated the government's plan to withdraw ₹500 and ₹1000 currency notes, which accounted for a significant 86% of the currency in circulation at the given period. The Act had notable repercussions, marked by substantial financial limitations and socio-economic hardship. Based on her assessment, the Central Board encountered notable constraints as a result of an extremely limited timeframe of 'scarcely 24 hours' to deliberate on the proposal put out by the Centre pertaining to the demonetization of the aforementioned currency notes.

Justice Nagarathna, in recognising the praiseworthy and altruistic goals behind the execution of demonetization, highlighted evident procedural shortcomings in the implemented procedure, resulting in the determination that it lacked legal legitimacy.

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<sup>3</sup> *Vivek Narayan Sharma v Union of India* MANU/SC/0002/2023

## LITERATURE REVIEW

**Whatever Works: Proportionality as a Constitutional Doctrine**<sup>4</sup> - In his study, Kyritsis undertakes a thorough examination of the practical implementation of the principle of proportionality in legal settings. The argument asserts that the application of proportionality frequently requires a practical approach, prioritising resolutions aimed at attaining desired results. This essay aims to provide a comprehensive analysis of the inherent conflict between the principled and pragmatic aspects of proportionality. It emphasises that the pragmatic application of this concept allows for greater flexibility in dealing with constitutional issues.

Nevertheless, it is crucial to recognise the current lack of study in this particular field. There exists a notable insufficiency in the examination of the potential drawbacks or obstacles linked to the pragmatic application of proportionality. The essay effectively highlights the benefits of embracing a flexible approach. However, it may be enhanced by engaging in a more thorough examination of the potential downsides or contradictions that may emerge when utilising proportionality in a practical manner. In order to augment the comprehensiveness of the article, it is suggested that counterarguments be incorporated, which would critique the pragmatic approach and advocate for a more principled or standardised implementation of the proportionality idea in particular cases.

**Principle of Proportionality: Extent and Application in Industrial Disputes**<sup>5</sup> - This article provides an analysis of the principle of proportionality within the realm of labour and employment disputes, with a specific emphasis on its utilisation in the resolution of conflicts between employers and employees. Particular emphasis is placed on circumstances pertaining to strikes, lockouts and collective bargaining.

Notwithstanding its valuable contributions, the article provides an avenue for additional exploration into the pragmatic obstacles that emerge in the course of implementing the principle of proportionality in industrial conflicts. This investigation aims to explore the intricacies

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<sup>4</sup> Dimitrios Kyritsis, 'Whatever Works: Proportionality as a Constitutional Doctrine' (2014) 34(2) Oxford Journal of Legal Studies <<https://www.jstor.org/stable/24562824>> accessed 20 September 2023

<sup>5</sup> Vashishta (n 1)

involved in identifying a suitable and ‘proportional’ reaction to labour acts, along with any conflicts that may arise between the principle of proportionality and other legal doctrines within the field of labour law. Furthermore, the report could enhance its pertinence by developing linkages to real-world situations.

**The Wednesbury Principle and Control of Executive Actions**<sup>6</sup> - The Wednesbury principle, alternatively referred to as the Wednesbury unreasonableness test, is a legal notion employed for evaluating the validity of administrative or executive decisions. The crux of the matter lies in ascertaining if a judgement is sufficiently irrational to the extent that it is beyond the realm of reasonability for any reasonable authority to have arrived at such a determination.

The study provides significant insights into the utilisation of the Wednesbury standard by courts to examine executive acts. However, there are opportunities for additional investigation in this area. The study may explore situations in which the requirement for adaptability and autonomy within the executive branch conflicts with the judiciary’s interpretation of this concept. One potential approach to addressing this gap in knowledge is to analyse specific cases in which courts have confronted the challenge of defining the limits of reasonableness and determining the appropriate level of judicial intervention in executive matters. Furthermore, the article could delve into scenarios in which the Wednesbury principle may be seen as excessively restrictive, thereby hindering the executive branch's capacity to effectively navigate complex and evolving circumstances.

## CRITICAL ANALYSIS

The legal precedent of ‘Wednesbury reasonableness’ was formed by the case of *Associated Provincial Picture Houses v Wednesbury Corporation*<sup>7</sup> in England, which holds great significance in the realm of administrative law. This standard establishes the point at which judgements made by public institutions become irrational, making them vulnerable to being

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<sup>6</sup> Padmalaya Kanungo, ‘Wednesbury Principle and control of Executive Actions’ (2021) 2(2) Jus Corpus Law Journal <<https://www.juscorpus.com/wp-content/uploads/2021/12/10.-Padmalaya-Kanungo.pdf>> accessed 20 September 2023

<sup>7</sup> *Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 KB 223

invalidated through the process of judicial review. In the given context, the court has established three conditions that justify its involvement in order to correct inadequate administrative judgements. These criteria have been further clarified in the case of *Council of Civil Service Unions v Minister for the Civil Service*<sup>8</sup>.

On the other hand, it is worth mentioning that the Indian legal system has not fully incorporated the extensive European notion of proportionality into its jurisprudential framework. However, it has embraced a fairly limited interpretation of the notion. The discrepancy might be ascribed to the lack of harmony between the fundamental principle of proportionality and the established customs within the common law tradition of judicial review. In contrast to the European administrative law system, which assigns significant importance to the court in evaluating administrative actions through the principle of proportionality, the traditional common law framework has traditionally avoided examining the content of administrative actions, thereby impeding the complete incorporation of the principle of proportionality. By adopting this idea, courts would effectively assume the role of principal assessors of administrative activities.

Consequently, the application of the concept of proportionality in India is considerably restricted. In contrast to its treatment in European administrative law, the autonomous nature of the principle is not recognised, as it is subsumed inside Article 14<sup>9</sup> of the Indian Constitution. The central focus of this discussion pertains to the arbitrary nature of administrative actions, as evaluated through the *Wednesbury* test, which assesses their rationality and reasonableness. According to the Supreme Court's decision in the *Royappa* case<sup>10</sup>, administrative measures that are considered arbitrary under Article 14<sup>11</sup> may be subject to nullification. The evaluation of arbitrary actions is contingent upon their absence of rationality and reasonableness, limiting the interpretation of proportionality, particularly in instances where sanctions are enforced by administrative bodies.

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<sup>8</sup> *Council of Civil Service Unions v Minister for the Civil Service* [1984] 3 All ER 935

<sup>9</sup> Constitution of India 1950, art 14

<sup>10</sup> *E. Royappa v State of Tamil Nadu* (1974) 4 SCC 3

<sup>11</sup> Constitution of India 1950, art 14

In the Indian context, the evaluation of administrative measures that infringe upon fundamental liberties has generally been approached by applying the principle of proportionality. In the given context, the concept of proportionality involves evaluating whether the legislative body or administrative authority has appropriately chosen the most suitable and least burdensome measures to govern the exercise of fundamental rights. This assessment aims to determine the extent to which the desired objectives of legislation or administrative directives have been effectively accomplished.

In cases where legislative statutes grant administrative agencies discretionary power to impose personalised limitations, a recurring concern arises - the assessment of whether the administrative authority has made an erroneous decision in implementing these limitations or if there has been an insufficient equilibrium between protecting fundamental rights and the need to impose restrictions that are reasonable and proportionate in extent. In light of the current conditions, it is crucial to incorporate the idea of proportionality while assessing administrative measures in India.<sup>12</sup>

The administrative activities of the European Court can be subject to dispute according to Article 14 of the Convention, which has a resemblance to Article 14<sup>13</sup> of the Indian Constitution. Such challenges are based on allegations of discrimination, evaluated through the lens of the 'Principle of proportionality'. Professor Craig references the legal precedent in *Lithgow v UK*<sup>14</sup>, emphasising the significance of maintaining a coherent relationship between legitimate goals and the strategies adopted. According to European legislation, member states are required to furnish substantiating proof for their conduct in cases involving gender-based discrimination. The scholarly work entitled 'EU Law and Human Rights' authored by Betten and Grief in 1998 emphasises the necessity of 'very weighty reasons' for the objective justification of indirect discrimination supported by the state. This aligns with the rigorous criterion of proportionality.

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<sup>12</sup> *Teri Oat Estates Pvt Ltd v U. T Chandigarh* (2004) 2 SCC 130

<sup>13</sup> Constitution of India 1950, art 14

<sup>14</sup> *Lithgow v UK* [1996] ECHR 329

In the landmark case of *K. S. Puttaswamy v Union of India*<sup>15</sup>, the Supreme Court upheld the notion of the test of proportionality. The Court placed significant emphasis on the necessity of evaluating the proportionality of a measure by carefully examining the restrictions imposed by the State on the basic rights of persons. This examination incorporates not only the legal and physical restraints but also the potential concerns that may arise among the people as a result of these restrictions. Therefore, it adds to the evaluation of proportionality.

An example that is more current can be observed in the legal case of *Anuradha Bhasin v Union of India*<sup>16</sup>, wherein the Supreme Court scrutinized the legitimacy of internet shutdowns and limitations on movement enforced in the Jammu and Kashmir area. The Court concisely summarised the main components of the proportionality principle that authorities must follow before enacting any action aimed at limiting the fundamental rights of persons.

In summary, Lord Greene's observations in the *Wednesbury* case establish that a decision that deviates from legal principles fails to consider pertinent evidence, or lacks reasonableness is susceptible to scrutiny through the process of judicial review. The aforementioned idea is reaffirmed in legal rulings such as the *Council of Civil Service* case, which emphasizes the imperative for decisions to prioritise the welfare of the general public and exhibit minimal constraints.<sup>17</sup>

Hence, in relation to the subject under discussion, it may be said that the Reserve Bank of India (RBI) and the federal government effectively employed the principle of proportionality during the demonetization initiative in 2016. The imposed limitation was deemed justifiable and did not infringe upon the principle of proportionality. Justice Gvai underscored that the implementation of demonetization was carried out with the distinct purpose of tackling legitimate apprehensions pertaining to counterfeit currency, undeclared assets, and illicit cash

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<sup>15</sup> *K.S. Puttaswamy v Union of India* (2019) 1 SCC 1

<sup>16</sup> *Anuradha Bhasin v Union of India* (2020) 3 SCC 637

<sup>17</sup> *Om Kumar v Union of India* (2001) 2 SCC 386



diversion. The individual emphasised the importance of establishing a cohesive and rational relationship between the execution of demonetization and its underlying goals.<sup>18</sup>

This analysis posits that demonetization, which aims to address concerns pertaining to counterfeit currency, black money, and terror financing, effectively meets the initial criteria by drawing heavily from the comprehensive four-pronged test outlined in the case of *Modern Dental College and Research Centre and Ors v State of Madhya Pradesh*<sup>19</sup>. The association between demonetization and the three objectives mentioned above serves as evidence of the achievement of the second criterion. In relation to the third examination, the task of devising economic policy measures to tackle these issues is assigned to monetary specialists, rendering the criterion of less invasive options inconsequential. The fourth criteria pertains to the notion of upholding individual rights without any violation, utilising legitimate currency for transactions, and permitting non-cash payment methods within the specified duration. Immediate measures were expeditiously undertaken to ensure the protection and welfare of the populace subsequent to the implementation of the demonetization endeavour. Therefore, given the 2023 judgement, the concept of proportionality is considered suitable.

## CONCLUSION

Based on the preceding considerations, the author of this scholarly article asserts that the utilisation of the criteria of proportionality was insufficiently applied during the issuance of the apex court's judgement in 2023. The utilisation of both the well-established *Wednesbury* principles and the subsequently amended principles in various scenarios has demonstrated the prudent application of these standards in confirming the lack of any wrongdoing on the part of the government regarding the issuance of the 2016 announcement. The only recommendation identified relates to the limitation placed on the federal government's frequent use of the defence of genuine intention in the pursuit of the public interest. The implementation of necessary steps

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<sup>18</sup> Krishnadas Rajagopal, 'Majority verdict finds no flaw in 2016 demonetisation process' (*The Hindu*, 02 January 2023) <<https://www.thehindu.com/news/national/sc-demonetisation-verdict/article66329113.ece>> accessed 20 September 2023

<sup>19</sup> *Dental College and Research Centre and Ors. v State of Madhya Pradesh* MANU/SC/0495/2016

to prevent ongoing marginalisation and harm experienced by minority communities, as demonstrated by the current situation in Kashmir<sup>20</sup>, is of utmost importance.

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<sup>20</sup> '145 days of internet shutdown in Kashmir, no word on service restoration' (*The Economics Times*, 27 December 2019) <<https://economictimes.indiatimes.com/news/politics-and-nation/145-days-of-internet-shutdown-in-kashmir-no-word-on-service-restoration/articleshow/72996839.cms?from=mdr>> accessed 20 September 2023