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JUDICIAL REVIEW OF FUNDAMENTAL RIGHTS IN INDIA: FROM CONSTITUTIONAL SUPREMACY TO PROPORTIONALITY

- SATHVIKA.J¹

I. Introduction:

Introduction:

The Constitution of India is the supreme law of the land and establishes a framework of limited government in which State power remains subject to constitutional restraints. Fundamental Rights guaranteed under Part III serve as essential limitations on governmental authority and provide individuals with enforceable protections against arbitrary State action.² Judicial review enables constitutional courts to examine legislative and executive measures and invalidate those inconsistent with Fundamental Rights or other constitutional requirements. Article 13 expressly recognises this power in relation to laws inconsistent with Part III, while Articles 32 and 226 provide important constitutional remedies for the enforcement of rights.³ The Supreme Court's approach, however, has evolved considerably. From the relatively formal rights analysis visible in early decisions such as *A.K. Gopalan v. State of Madras*, judicial review progressively developed into a more substantive examination of State action, particularly following *Maneka Gandhi v. Union of India*.⁴ In this evolution, proportionality has emerged as an important framework for determining whether restrictions on Fundamental Rights are constitutionally justified.⁵

Statement of the Problem:

- Traditional judicial review primarily examined whether State action was constitutionally permissible.
- Over time, courts increasingly examined the **reasonableness, arbitrariness, necessity and impact** of restrictions on rights.
- The emergence of proportionality raises questions regarding the appropriate intensity and limits of judicial review.

Research Questions:

1. How has the scope and methodology of judicial review of Fundamental Rights evolved in India?

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² INDIA CONST. pt. III, arts. 12–35.

³ INDIA CONST. arts. 13, 32, 226.

⁴ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27; *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

⁵ *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353; *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

Judicial review of Fundamental Rights in India has evolved from a relatively formal examination of constitutional validity towards a more substantive assessment of State action. Early jurisprudence, particularly *A.K. Gopalan v. State of Madras*, adopted a compartmentalised approach to Fundamental Rights. The constitutional position subsequently developed through decisions such as *Kesavananda Bharati* and *Maneka Gandhi*, strengthening judicial scrutiny of legislative and executive action. Articles 13, 32 and 226 provide important constitutional foundations for this review.⁶ The contemporary approach increasingly examines not only whether State action is legally authorised, but also whether its effect upon Fundamental Rights satisfies constitutional standards such as reasonableness and proportionality.⁷

2. How has the Supreme Court's approach changed from formal constitutional review to substantive rights review?

The Supreme Court's approach has progressively shifted from determining the formal validity of State action towards examining its substantive effect upon individual rights. In *A.K. Gopalan*, Fundamental Rights were substantially treated as distinct constitutional guarantees, permitting a narrower form of review. *Maneka Gandhi*, however, established a more integrated understanding of Articles 14, 19 and 21, requiring State action affecting personal liberty to satisfy standards of fairness and reasonableness.⁸ Subsequent decisions expanded scrutiny of governmental measures by considering arbitrariness, reasonableness and the actual impact of restrictions upon rights. This development ultimately created the doctrinal conditions for proportionality to emerge as a structured method of rights review.⁹

3. What role have Articles 14, 19 and 21 played in transforming the nature and intensity of judicial review?

Articles 14, 19 and 21 have played a central role in transforming Indian Fundamental Rights jurisprudence. Article 14 developed from a prohibition against discriminatory classification into a broader guarantee against arbitrary State action. Article 19 requires restrictions upon specified freedoms to satisfy constitutionally prescribed standards of reasonableness, while Article 21 has been interpreted to require fair, just and reasonable procedures. *Maneka Gandhi* brought these guarantees into an integrated framework, significantly expanding substantive judicial review.¹⁰ Later cases applied proportionality to restrictions affecting freedoms under Article 19 and privacy and liberty interests under Article 21. Thus, these provisions have progressively increased the constitutional scrutiny applied to State restrictions.¹¹

4. How has proportionality emerged as a constitutional standard for determining the validity of restrictions imposed upon Fundamental Rights?

Proportionality emerged in Indian constitutional jurisprudence through earlier public-law decisions such as *Om Kumar v. Union of India* and was subsequently developed as a structured

⁶ INDIA CONST. arts. 13, 32, 226; *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27. The Supreme Court recognises Article 32 as providing original jurisdiction for enforcement of Fundamental Rights and describes the Constitution as the supreme legal authority.

⁷ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248; *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.

⁸ *A.K. Gopalan*, AIR 1950 SC 27; *Maneka Gandhi*, (1978) 1 SCC 248.

⁹ *Modern Dental College*, (2016) 7 SCC 353; *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

¹⁰ *Maneka Gandhi*, (1978) 1 SCC 248; *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3.

¹¹ *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221; *K.S. Puttaswamy*, (2017) 10 SCC 1. The Supreme Court has specifically identified *Modern Dental College*, *Subramanian Swamy* and *Puttaswamy* among decisions applying proportionality to different Fundamental Rights contexts.

rights-review standard in *Modern Dental College & Research Centre v. State of Madhya Pradesh*.¹² The framework requires examination of whether a rights-restricting measure pursues a legitimate aim, bears a rational connection to that aim, is necessary or minimally impairing, and maintains an appropriate balance between the right and the public objective.¹³ The Supreme Court subsequently applied proportionality in cases involving privacy, economic regulation and other Fundamental Rights. Contemporary jurisprudence recognises proportionality as an important standard for testing both legislative and administrative measures affecting Fundamental Rights.¹⁴

5. To what extent does the proportionality framework provide a structured and coherent methodology for adjudicating conflicts between Fundamental Rights and legitimate State objectives?

Proportionality provides a structured methodology by dividing constitutional review into identifiable stages rather than treating restrictions upon rights solely through a general inquiry into reasonableness. The Supreme Court has articulated four principal stages: legitimate aim, rational connection, necessity or minimal impairment, and balancing.¹⁵ This framework enables courts to identify the governmental objective, examine the relationship between the measure and that objective, consider less restrictive alternatives, and assess the relationship between the benefits achieved and the harm caused to the right. However, proportionality does not eliminate judicial judgment. The assessment of necessity and final balancing may involve contextual and evaluative determinations, meaning that its structure does not necessarily produce uniform outcomes in every case.¹⁶

6. What challenges does the application of proportionality present in relation to judicial discretion, institutional competence, legislative deference and the separation of powers?

The application of proportionality raises questions concerning the appropriate intensity of judicial review and the institutional limits of courts. Determining whether a measure is necessary may require consideration of alternative policy choices, while balancing requires courts to weigh competing constitutional interests. These inquiries may bring courts closer to evaluating the merits of legislative or executive policy, thereby raising concerns about judicial discretion and separation of powers. At the same time, proportionality can provide a disciplined framework for reviewing rights restrictions without automatically substituting judicial preferences for legislative choices. The challenge therefore lies in maintaining meaningful protection of Fundamental Rights while respecting institutional competence and appropriate legislative and executive space.¹⁷

¹² *Om Kumar v. Union of India*, (2001) 2 SCC 386; *Modern Dental College*, (2016) 7 SCC 353.

¹³ *Modern Dental College*, (2016) 7 SCC 353. The Supreme Court has reaffirmed the four-part proportionality test: legitimate aim, rational connection, minimal impairment/necessity, and balancing.

¹⁴ *K.S. Puttaswamy (Aadhaar) v. Union of India*, (2019) 1 SCC 1; *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637. The Supreme Court has stated that Fundamental Rights violations are to be tested against proportionality and has applied the standard to administrative action affecting fundamental freedoms.

¹⁵ *Modern Dental College*, (2016) 7 SCC 353; *K.S. Puttaswamy (Aadhaar)*, (2019) 1 SCC 1. See also Supreme Court of India, 2024 INSC 113, describing the four stages of proportionality.

¹⁶ *Gujarat Mazdoor Sabha v. State of Gujarat*, (2020) 10 SCC 459. The Supreme Court has also discussed safeguards against abuse as an additional consideration in proportionality analysis.

¹⁷ *Om Kumar*, (2001) 2 SCC 386; *Modern Dental College*, (2016) 7 SCC 353. See also *State of T.N. v. National South Indian River Interlinking Agriculturist Ass'n*, (2021) 15 SCC 534, concerning the contextual and non-mechanical application of proportionality.

Hypothesis:

The Indian Supreme Court's approach to Fundamental Rights has evolved from a predominantly formal examination of constitutional validity towards a more substantive and structured proportionality-based review, strengthening rights protection while raising questions concerning judicial discretion and institutional boundaries.

Rationale for the Hypothesis: This hypothesis is based on the **gradual transformation of Fundamental Rights jurisprudence** in India. Early decisions such as *A.K. Gopalan* adopted a relatively formal approach to constitutional review, whereas *Maneka Gandhi* expanded judicial scrutiny by requiring greater fairness and reasonableness in State action. Later decisions, particularly *Modern Dental College* and *K.S. Puttaswamy*, developed proportionality as a structured method for examining restrictions on Fundamental Rights. Therefore, the hypothesis seeks to examine whether this evolution has strengthened judicial protection of rights while simultaneously increasing questions about **judicial discretion, institutional competence, and separation of powers.**

Research Methodology:

The study adopts a **doctrinal or black-letter legal research methodology**, focusing on the analysis and interpretation of existing constitutional principles, judicial decisions and legal literature. The **primary sources** include the Constitution of India, particularly the provisions relating to Fundamental Rights and judicial review, relevant Supreme Court judgments, and applicable statutes. The **secondary sources** comprise books, peer-reviewed journal articles, Law Commission and relevant committee reports, and scholarly commentaries on constitutional adjudication and proportionality. The study also incorporates a **comparative analysis** of proportionality and Fundamental Rights review in Germany, the United Kingdom and the United States to identify similarities, differences and possible influences on Indian constitutional jurisprudence. The research is primarily qualitative and analytical in nature, with emphasis on tracing doctrinal developments over time.

Scope and Limitations:

This study primarily focuses on the **Supreme Court of India's jurisprudence** concerning judicial review of Fundamental Rights under Part III of the Constitution. Particular emphasis is placed on **Articles 14, 19 and 21**, as their interpretation has significantly contributed to the expansion of substantive rights review and the development of proportionality. The study examines the emergence and application of **proportionality as a standard for assessing restrictions on Fundamental Rights**, including its relationship with reasonableness, arbitrariness and constitutional justification. While relevant comparative references may be made where necessary, the principal focus remains Indian constitutional jurisprudence. The study does not seek to examine every dimension of judicial review or comprehensively analyse every Fundamental Right, but concentrates on the doctrinal evolution relevant to its central research questions.

II. Constitutional Foundations of Judicial Review in India:

1. Meaning and Nature of Judicial Review:

Judicial review refers to the power of constitutional courts to examine legislative and executive action and determine whether it conforms to the Constitution. It operates as a mechanism for maintaining

constitutional supremacy and protecting Fundamental Rights against unconstitutional State action.¹⁸ Judicial review must be distinguished from **judicial activism**, which broadly describes an approach involving comparatively proactive judicial intervention in matters affecting rights or governance. It is also distinct from **judicial interpretation**, which concerns the ascertainment of constitutional meaning; judicial review applies that interpretation to determine constitutional validity. Thus, interpretation is an essential component of review, while activism concerns the judicial approach adopted in exercising constitutional powers.

2. Constitutional Basis:

The constitutional foundation of judicial review is principally found in **Articles 13, 32 and 226**. Article 13 declares laws inconsistent with Fundamental Rights void to the extent of such inconsistency. Article 32 guarantees the right to approach the Supreme Court for enforcement of Fundamental Rights, while Article 226 gives High Courts a wider writ jurisdiction extending to Fundamental Rights and “any other purpose.”¹⁹ Articles **14, 19 and 21** provide substantive standards against which State action may be tested, particularly concerning equality, freedoms and life and personal liberty. The Supreme Court has recognised judicial review under Articles 32 and 226 as an integral and essential feature of the constitutional structure.²⁰

3. Constitutional Supremacy and Parliamentary Power:

The Indian constitutional system establishes the **Constitution as the supreme legal authority**, binding the legislature, executive and judiciary.²¹ Parliamentary legislative power is therefore subject not merely to questions of legislative competence but also to substantive constitutional limitations, including Fundamental Rights. Article 245 itself makes legislative power subject to the Constitution.²² Courts consequently perform the constitutional function of ensuring that governmental institutions remain within their assigned powers. This does not mean that courts ordinarily substitute their policy preferences for legislative choices; rather, judicial review ensures that the exercise of public power remains constitutionally permissible.

4. Early Judicial Approach:

The early jurisprudence demonstrates a comparatively formal approach to Fundamental Rights. In **A.K. Gopalan v. State of Madras**, the Supreme Court treated the guarantees in Part III largely as separate and distinct rights, particularly in interpreting Articles 19 and 21.²³ In **State of Madras v. Champakam Dorairajan**, the Court invalidated a communal Government Order inconsistent with Article 29(2), affirming the primacy of Fundamental Rights over conflicting executive measures.²⁴ The question of Parliament's power to amend Fundamental Rights subsequently arose in **Shankari Prasad v. Union of India** and **Sajjan Singh v. State of Rajasthan**, where the Court upheld

¹⁸ INDIA CONST. arts. 13, 32, 226; Supreme Court of India, **Constitution**, explaining the Constitution's status as the supreme legal authority and the judiciary's power to invalidate unconstitutional legislation or governmental action.

¹⁹ INDIA CONST. arts. 13, 32, 226; *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261. The Supreme Court has recognised judicial review under Articles 32 and 226 as an integral and essential feature of the Constitution.

²⁰ *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261; see also *I.R. Coelho v. State of Tamil Nadu*, (2007) 2 SCC 1.

²¹ INDIA CONST.; Supreme Court of India, **Constitution**, supra note 1.

²² INDIA CONST. art. 245.

²³ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

²⁴ *State of Madras v. Champakam Dorairajan*, AIR 1951 SC 226.

Parliament's constituent power to amend Fundamental Rights.²⁵ These decisions established the early foundations upon which the later transformation of judicial review would develop.

III. Evolution of Judicial Review and the Basic Structure Doctrine :

The evolution of judicial review in India cannot be understood without examining the constitutional conflict concerning the **amending power of Parliament and the protection of Fundamental Rights**. This phase established an important foundation for the later development of substantive rights review and proportionality.

1. *I.C. Golaknath v. State of Punjab*:

In *I.C. Golaknath v. State of Punjab*, the Supreme Court, by a narrow majority, held that Parliament could not amend Fundamental Rights in a manner that took them outside the protection of Part III.²⁶ The Court treated a constitutional amendment as “law” for the purposes of Article 13 and consequently subjected amendments affecting Fundamental Rights to constitutional limitations.²⁷ Although the decision was subsequently modified by *Kesavananda Bharati*, *Golaknath* was significant because it strengthened the judicial role in protecting Fundamental Rights against constitutional amendment. It also brought into sharp focus the relationship between **Parliamentary constituent power, Article 13 and judicial review**.

2. *Kesavananda Bharati v. State of Kerala*:

The constitutional conflict reached its decisive stage in *Kesavananda Bharati v. State of Kerala*. The Supreme Court rejected the absolute position adopted in *Golaknath* and recognised that Parliament possesses broad power to amend the Constitution under Article 368. However, that power is **not unlimited**. By a 7–6 majority, the Court established the **Basic Structure Doctrine**, holding that constitutional amendments cannot alter or destroy the Constitution's basic structure.²⁸ Constitutional supremacy, republican democracy, rule of law, separation of powers and judicial review were recognised as among the principles protected by this doctrine.²⁹ Consequently, Parliament's constituent power remained subject to substantive constitutional limitations, while judicial review became an essential mechanism for determining whether constitutional amendments exceeded those limits.

3. *Indira Nehru Gandhi v. Raj Narain*:

The Basic Structure Doctrine was subsequently applied in *Indira Nehru Gandhi v. Raj Narain*, where the Court examined the constitutional validity of the Thirty-Ninth Amendment.³⁰ The judgment reinforced the relationship between **democracy, rule of law and judicial review**. Constitutional amendments could not be employed to place particular governmental actions beyond meaningful constitutional scrutiny where doing so damaged basic constitutional principles. The case therefore

²⁵ *Shankari Prasad Singh Deo v. Union of India*, AIR 1951 SC 458; *Sajjan Singh v. State of Rajasthan*, AIR 1965 SC 845.

²⁶ *I.C. Golaknath v. State of Punjab*, AIR 1967 SC 1643.

²⁷ The majority reasoned that the term “law” in Article 13(2) included constitutional amendments and therefore Parliament could not abridge Fundamental Rights through its amending power.

²⁸ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

²⁹ *I.R. Coelho v. State of Tamil Nadu*, (2007) 2 SCC 1 (reaffirming the Basic Structure Doctrine and the constitutional significance of judicial review).

³⁰ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1.

demonstrated that judicial review was not merely a mechanism for examining ordinary legislation; it could also operate as a substantive limitation upon the constitutional amending power itself.

4. *Minerva Mills v. Union of India*:

In *Minerva Mills Ltd. v. Union of India*, the Supreme Court further strengthened the Basic Structure Doctrine by invalidating provisions of the Forty-Second Amendment that attempted to give Parliament virtually unlimited amending authority and restrict judicial review.³¹ The Court emphasised that **limited government and limited amending power** are fundamental to constitutionalism. It also recognised the importance of maintaining harmony between Fundamental Rights and Directive Principles rather than permitting one constitutional component to completely destroy the other.³² Most importantly for the present study, the judgment treated **judicial review as part of the Constitution's basic structure**, thereby protecting the judiciary's constitutional role in reviewing exercises of public power.

Analytical Focus:

These decisions establish the constitutional foundation upon which later rights jurisprudence developed. *Golaknath* questioned Parliament's power over Fundamental Rights; *Kesavananda Bharati* transformed that conflict into the Basic Structure Doctrine; *Indira Gandhi* applied the doctrine to democratic constitutionalism; and *Minerva Mills* reinforced judicial review as an essential constitutional safeguard. Thus, **before proportionality emerged as a structured method of rights adjudication, constitutional supremacy established the authority of courts to test State action and constitutional amendments against substantive constitutional limitations.**

IV. From Formalism to Substantive Protection of Fundamental Rights:

The development of Fundamental Rights jurisprudence in India reflects a gradual movement from a formal examination of constitutional validity towards a more substantive scrutiny of State action. This transformation is particularly visible in the interpretation of Articles 14, 19 and 21. The shift enabled constitutional courts to examine not merely whether law, but also whether the law and its implementation were fair, reasonable, non-arbitrary and consistent with constitutional freedoms supported governmental action.

1. Transformation of Article 21

A.K. Gopalan v. State of Madras

In *A.K. Gopalan v. State of Madras*, the Supreme Court adopted a relatively narrow interpretation of “personal liberty” under Article 21.³³ The majority treated the Fundamental Rights in Part III as substantially distinct and separate guarantees. Consequently, a law depriving a person of personal liberty was primarily examined by reference to Article 21 and the existence of a procedure established by law, rather than through a cumulative examination under Articles 14 and 19.³⁴ This approach

³¹ *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625.

³² The Court emphasised the need for harmony and balance between Parts III and IV of the Constitution and held that Parliament's limited amending power and judicial review constitute basic features of the constitutional structure.

³³ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27. The early approach treated Article 21 primarily through the requirement of “procedure established by law” and adopted a relatively narrow conception of personal liberty.

³⁴ *A.K. Gopalan*, AIR 1950 SC 27; see also *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (discussing and rejecting the earlier compartmentalised approach to Fundamental Rights).

reflected a formal conception of constitutional review in which the principal inquiry was whether the legislature had enacted a valid law prescribing the relevant procedure.

Maneka Gandhi v. Union of India

The position underwent a fundamental transformation in *Maneka Gandhi v. Union of India*. The Court rejected the rigid conception that Fundamental Rights operated in isolated compartments and emphasised their interrelationship, particularly Articles 14, 19 and 21.³⁵ The expression “personal liberty” was given a broad meaning, and the procedure by which liberty could be restricted was required to satisfy standards of fairness, reasonableness and non-arbitrariness.³⁶ Thus, the mere existence of enacted law was no longer sufficient; the constitutional validity of the procedure itself became subject to substantive scrutiny.

Maneka Gandhi therefore transformed Article 21 from a predominantly procedural guarantee into a significant source of substantive constitutional protection. It also established the doctrinal foundation for what is often described as the interrelationship or “golden triangle” of Articles 14, 19 and 21. The decision consequently marked an important transition from formal legality towards substantive constitutional review.³⁷

2. Evolution of Article 14

The transformation of Article 14 similarly expanded judicial review beyond the traditional doctrine of reasonable classification. In *E.P. Royappa v. State of Tamil Nadu*, the Supreme Court held that equality could not be confined to the classification test and developed the principle that arbitrariness is fundamentally inconsistent with equality.³⁸ Article 14 consequently acquired a broader role in controlling arbitrary State action.

This approach was further articulated in *Ajay Hasia v. Khalid Mujib Sehravardi*, where the Court explained that the classification doctrine was only a judicial method for determining whether State action was arbitrary and therefore inconsistent with Article 14.³⁹ The decision reinforced the principle that State action must satisfy standards of reasonableness, rationality and non-arbitrariness. Article 14 thus evolved from a predominantly formal equality guarantee into a substantive constitutional limitation on the exercise of public power.

The development is significant for judicial review because it enabled courts to examine the **quality and rationality of State action**, rather than merely determining whether similarly situated persons had been classified differently.

3. Expansion of Fundamental Rights

The substantive approach subsequently facilitated a considerable expansion of Fundamental Rights. Article 21 became the constitutional foundation for rights connected with dignity, autonomy and personal liberty. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, the Court

³⁵ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248. The judgment rejected the exclusivity of individual Fundamental Rights and emphasised the interrelationship between Articles 14, 19 and 21.

³⁶ *Maneka Gandhi*, (1978) 1 SCC 248 (holding that the procedure affecting personal liberty must satisfy constitutional requirements of fairness and reasonableness).

³⁷ *Maneka Gandhi*, (1978) 1 SCC 248. The later Supreme Court has repeatedly treated *Maneka Gandhi* as a decisive transformation in the interpretation of Articles 14, 19 and 21.

³⁸ *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3. The Court developed the principle that arbitrariness is antithetical to equality under Article 14.

³⁹ *Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722. The Court explained that Article 14 strikes at arbitrariness and that the classification doctrine is a judicial method for determining whether State action is arbitrary.

associated the right to life with living with human dignity, while later jurisprudence progressively recognised additional dimensions of personal liberty.⁴⁰

The right to privacy represents a major example of this development. In *K.S. Puttaswamy (Retd.) v. Union of India*, a nine-judge Bench unanimously recognised privacy as a constitutionally protected right arising from the guarantees of life, personal liberty and other Fundamental Rights.⁴¹ The Court connected privacy with dignity, autonomy and individual choice.

Freedom of speech has likewise received substantive protection. In *Shreya Singhal v. Union of India*, the Supreme Court invalidated Section 66A of the Information Technology Act, 2000, for violating Article 19(1)(a).⁴² The Court's jurisprudence subsequently addressed the application of constitutional freedoms to the digital environment. In *Anuradha Bhasin v. Union of India*, the Court recognised that freedom of speech and expression through the internet is constitutionally protected, while restrictions remain subject to the requirements of Article 19(2).⁴³ The right to know has also been linked to freedom of speech and expression, notably in *State of Uttar Pradesh v. Raj Narain* and subsequent right-to-information jurisprudence.⁴⁴

4. Significance of the Transformation

The movement from *A.K. Gopalan* to *Maneka Gandhi* and the subsequent development of Articles 14, 19 and 21 fundamentally altered the methodology of judicial review. The constitutional inquiry increasingly moved beyond asking whether State action possessed a formal legal basis and towards examining whether the exercise of State power was **fair, reasonable, non-arbitrary and compatible with constitutional rights**.⁴⁵

This transformation is particularly important to the present study because it created the doctrinal conditions for the later emergence of proportionality. Once judicial review began examining the justification, reasonableness and impact of restrictions upon Fundamental Rights, the need arose for a more structured methodology through which courts could assess whether an interference with a right was constitutionally justified. The evolution from formal legality to substantive rights protection therefore provides the immediate jurisprudential background against which proportionality must be understood.

V. Emergence of Proportionality in Indian Constitutional Law:

The transformation of Fundamental Rights jurisprudence from formal legality to substantive protection created the foundation for the emergence of proportionality as an important standard of constitutional review. While Indian courts had long examined whether restrictions upon Fundamental Rights were reasonable, the doctrine of proportionality introduced a more structured methodology for

⁴⁰ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608; *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494. The subsequent Article 21 jurisprudence connected life and personal liberty with human dignity. See also *K.S. Puttaswamy (Retd.)*, (2017) 10 SCC 1.

⁴¹ *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1. The Court recognised privacy as intrinsic to life and personal liberty and closely connected it with dignity and individual autonomy.

⁴² *Shreya Singhal v. Union of India*, (2015) 5 SCC 1. The Supreme Court struck down 66A of the Information Technology Act, 2000, as unconstitutional for violating Article 19(1)(a).

⁴³ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637. The Court considered freedom of speech and expression through the internet and held that restrictions on such freedom must comply with Article 19(2).

⁴⁴ *State of Uttar Pradesh v. Raj Narain*, (1975) 4 SCC 428; *Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal*, (2019) 16 SCC 1. The right to know has been recognised as connected with the freedom of speech and expression under Article 19(1)(a).

⁴⁵ *E.P. Royappa*, (1974) 4 SCC 3; *Maneka Gandhi*, (1978) 1 SCC 248; *Ajay Hasia*, (1981) 1 SCC 722.

determining whether an infringement of a constitutional right could be justified. The development may be traced through *Om Kumar v. Union of India*, *Modern Dental College & Research Centre v. State of Madhya Pradesh* and the subsequent privacy jurisprudence in *K.S. Puttaswamy v. Union of India*.⁴⁶

1. Meaning and Stages of Proportionality

Proportionality is based on the principle that even where the State pursues a legitimate public objective, the means adopted to achieve that objective must bear an appropriate relationship to the Fundamental Right being restricted. In *Modern Dental College*, the Supreme Court adopted a four-part proportionality analysis consisting of legitimate purpose, rational connection, necessity and balancing.⁴⁷ The stages are interconnected, but each performs a distinct function in constitutional review.

A. Legitimate Aim

The first inquiry is whether the State action pursues a legitimate or proper governmental objective. A restriction upon a Fundamental Right cannot be justified merely because the State possesses general regulatory authority. The purpose underlying the restriction must itself be constitutionally permissible.⁴⁸ In the context of Article 19, the permissible objective must ordinarily be traceable to one of the grounds expressly recognised in Articles 19(2)–(6), depending upon the freedom involved.⁴⁹

This stage therefore requires the Court to identify the actual objective of the impugned measure before examining the suitability of the means adopted. It prevents the State from justifying a rights-infringing measure by relying upon an objective that is unrelated to the constitutional scheme.

B. Suitability or Rational Connection

The second stage examines whether there is a rational connection between the measure adopted and the legitimate objective sought to be achieved. The question is whether the impugned measure is capable of furthering the stated purpose.⁵⁰ A measure that has no meaningful relationship with its objective cannot survive proportionality review merely because the objective itself is legitimate.

This stage consequently introduces a connection between **ends and means** into constitutional review. The Court is not required at this stage to determine whether the measure is the best possible policy choice; rather, it asks whether the chosen means are logically capable of advancing the identified governmental purpose.

C. Necessity or Minimal Impairment

⁴⁶ *Om Kumar v. Union of India*, (2001) 2 SCC 386; *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353; *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1; *K.S. Puttaswamy (Aadhaar) v. Union of India*, (2019) 1 SCC 1. The Supreme Court has subsequently traced the development of proportionality through these decisions.

⁴⁷ *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353. The Court identified the four components as proper purpose, rational connection, necessity and proportionality *stricto sensu* (balancing).

⁴⁸ *Id.* The legitimate-purpose inquiry forms the first component of the proportionality analysis.

⁴⁹ INDIA CONST. art. 19(2)–(6). The Supreme Court has subsequently reiterated that, in Article 19 cases, the objective of the State action must be traceable to the constitutionally specified grounds of restriction.

⁵⁰ *Modern Dental College*, (2016) 7 SCC 353. The rational-connection stage asks whether the means adopted are connected to the legitimate objective.

The third stage examines whether the State could achieve the same legitimate objective through a less restrictive measure that is equally effective or sufficiently effective.⁵¹ This represents an important development in rights review because it requires consideration of available alternatives rather than examining the impugned measure in isolation.

The necessity stage therefore places greater emphasis upon the extent of interference with the right. Where an alternative measure can substantially achieve the same public objective while imposing a lesser burden upon the Fundamental Right, the more restrictive measure becomes constitutionally difficult to justify. This stage also demonstrates why proportionality can involve a more intensive form of judicial scrutiny than a purely formal inquiry into legislative authority.

D. Balancing or Proportionality *Stricto Sensu*

The final stage requires the Court to balance the importance of the governmental objective against the severity of the restriction imposed upon the Fundamental Right.⁵² The question is whether the constitutional and social benefits produced by the measure justify the degree of impairment suffered by the right-holder.

Balancing is therefore concerned with the **overall relationship between the competing constitutional interests**. A restriction may pursue a legitimate objective and may be rationally connected to that objective, yet still fail proportionality if its adverse impact upon the right is excessive in relation to the public benefit obtained.

The four stages consequently create a sequential framework:

Legitimate Aim → Rational Connection → Necessity → Balancing.

2. Proportionality and Reasonableness

Proportionality did not emerge in complete isolation from Indian constitutional jurisprudence. The Constitution, particularly Article 19, has traditionally required restrictions upon specified freedoms to be “reasonable.” Courts have therefore long examined factors such as the nature of the right, the purpose of the restriction, its extent and its relationship with the public interest.⁵³ In *State of Madras v. V.G. Row*, the Supreme Court emphasised that reasonableness must be determined with reference to the circumstances of the particular restriction rather than through a single abstract formula.⁵⁴

The distinction between reasonableness and proportionality became more explicit in administrative law. In *Om Kumar v. Union of India*, the Supreme Court discussed the relationship between the traditional *Wednesbury* principle of unreasonableness and proportionality. The Court explained that administrative action affecting fundamental freedoms under Articles 19 and 21 had historically been subjected to proportionality-type review, even when courts did not expressly use that terminology.⁵⁵

⁵¹ *K.S. Puttaswamy (Aadhaar)*, (2019) 1 SCC 1. The necessity stage requires consideration of less restrictive but equally effective alternatives.

⁵² *Modern Dental College*, (2016) 7 SCC 353; *K.S. Puttaswamy (Aadhaar)*, (2019) 1 SCC 1. The balancing stage considers the relationship between the importance of achieving the governmental objective and the extent of impairment of the constitutional right.

⁵³ *State of Madras v. V.G. Row*, AIR 1952 SC 196; *Modern Dental College*, (2016) 7 SCC 353. The Supreme Court has explained that “reasonableness” under Article 19 involves consideration of the nature of the right, purpose and extent of the restriction and the interests involved.

⁵⁴ *State of Madras v. V.G. Row*, AIR 1952 SC 196. The Court observed that no single abstract standard of reasonableness can be mechanically applied to every restriction. The principle has subsequently been reiterated in *Ramlila Maidan Incident, In re*, (2012) 5 SCC 1.

⁵⁵ *Om Kumar*, (2001) 2 SCC 386. The Court distinguished proportionality review of administrative action affecting fundamental freedoms from the traditional *Wednesbury* approach.

At the same time, the Court distinguished such review from the more limited *Wednesbury* approach applicable in other administrative-law contexts.⁵⁶

The significant development occurred in *Modern Dental College*. The Court described proportionality as a means of determining whether limitations upon constitutional rights are constitutionally permissible and expressly articulated the four components of legitimate purpose, rational connection, necessity and balancing.⁵⁷ The Court also observed that the doctrine is closely connected with the concept of reasonable restrictions under Article 19.⁵⁸ Thus, proportionality and reasonableness should not be understood as completely unrelated doctrines.

The principal difference lies in **methodology and intensity**. Reasonableness review traditionally asks whether a restriction is arbitrary, excessive or lacking a rational relationship with its objective. Proportionality can incorporate these inquiries but organises them into identifiable stages and expressly requires attention to less restrictive alternatives and the overall balance between rights and governmental objectives.⁵⁹ Consequently, proportionality can provide a more transparent framework for explaining why a particular restriction is constitutionally justified or excessive.

The distinction should nevertheless not be overstated. Indian constitutional law does not always employ a rigidly uniform proportionality formula. The intensity of review may depend upon the right involved, the nature of the State action and the constitutional provision under which the restriction is imposed. Indeed, subsequent Supreme Court jurisprudence has continued to refine the doctrine. The Court has described the four-stage formulation in *Modern Dental* and *Puttaswamy (Aadhaar)* as central to contemporary proportionality review, while later decisions have considered additional safeguards against abuse in particular contexts.⁶⁰

Therefore, proportionality represents less a complete replacement of reasonableness than an **increasingly structured form of substantive constitutional review**. It transforms the question from simply asking whether State action is reasonable into a series of more precise inquiries concerning the legitimacy of the objective, the suitability of the means, the availability of less restrictive alternatives and the final balance between individual rights and public interests. This development forms the immediate doctrinal foundation for examining how proportionality operates in contemporary Fundamental Rights adjudication.

VI. Judicial Development of Proportionality in India:

The emergence of proportionality as a significant standard of constitutional review in India is best understood through the Supreme Court's gradual application of the doctrine across administrative law, Fundamental Rights, privacy, digital freedoms and economic regulation. The jurisprudence

⁵⁶ *Id.* The judgment explains that *Wednesbury* review traditionally asks whether relevant considerations were taken into account, irrelevant considerations were excluded and whether the decision was one that no reasonable authority could have made.

⁵⁷ *Modern Dental College*, (2016) 7 SCC 353.

⁵⁸ *Id.* The Court expressly connected proportionality with the concept of “reasonable restrictions” under Article 19, observing that a reasonable restriction should not be arbitrary or excessive and should bear a reasonable relationship to its objective.

⁵⁹ *Modern Dental College*, (2016) 7 SCC 353; *K.S. Puttaswamy (Aadhaar)*, (2019) 1 SCC 1. The four-stage formulation expressly incorporates suitability, necessity and balancing.

⁶⁰ *Gujarat Mazdoor Sabha v. State of Gujarat*, (2020) 10 SCC 459; *Ramesh Chandra Sharma v. State of Uttar Pradesh*, 2023 SCC OnLine SC 162. A later Supreme Court judgment has noted that *Gujarat Mazdoor Sabha* added a further safeguard concerning protection against abuse of a restriction in the particular context in which it applied proportionality.

demonstrates that proportionality has developed incrementally rather than through a single constitutional pronouncement. At the same time, the cases reveal differences in the intensity and methodology of proportionality review, particularly concerning judicial deference, necessity and balancing.

1. *Om Kumar v. Union of India*: The Early Administrative Law Foundation

An important early discussion of proportionality appears in *Om Kumar v. Union of India*.⁶¹ The case concerned disciplinary action and the scope of judicial review over administrative decisions. The Supreme Court distinguished between the traditional *Wednesbury* principle of unreasonableness and proportionality review.⁶²

The Court explained that where administrative action affected fundamental freedoms protected by Articles 19 and 21, Indian courts had, even before explicitly adopting the language of proportionality, undertaken a more intensive examination of whether the restriction was proportionate to its objective.⁶³ In contrast, *Wednesbury* review generally involved a more limited inquiry into whether the decision was so unreasonable that no reasonable authority could have adopted it.

The importance of *Om Kumar* therefore lies less in the formulation of a complete proportionality test and more in identifying **proportionality as a distinct intensity of judicial review**. The judgment also recognised that the degree of judicial scrutiny may vary according to the nature of the right and governmental action. This distinction became significant for later constitutional jurisprudence because proportionality could operate as a more rights-sensitive alternative to deferential review.

2. *Modern Dental College & Research Centre v. State of Madhya Pradesh*: Structured Proportionality

The decisive doctrinal development occurred in *Modern Dental College & Research Centre v. State of Madhya Pradesh*.⁶⁴ The case concerned regulatory measures governing admissions and fees in private professional educational institutions and involved the scope of the right under Article 19(1)(g).

The Constitution Bench expressly formulated proportionality as a structured four-stage inquiry. A restriction upon a constitutional right must pursue a proper purpose; the means adopted must have a rational connection with that purpose; the measure must be necessary, meaning that a similarly effective but less restrictive alternative should not be available; and there must ultimately be an appropriate relationship between the importance of achieving the objective and the extent of limitation imposed upon the right.⁶⁵

The significance of *Modern Dental* lies in converting proportionality from a general idea of excessive State action into an identifiable **method of constitutional reasoning**. It requires the Court to examine both the government's objective and the means chosen to achieve it. Particularly important is the necessity stage, because it requires attention to alternatives and therefore prevents the State from

⁶¹ *Om Kumar v. Union of India*, (2001) 2 SCC 386. The Supreme Court discussed proportionality and distinguished it from *Wednesbury* review in the context of administrative action.

⁶² *Id.* The Court described the distinction between primary review based on proportionality/strict scrutiny and secondary review based on *Wednesbury* principles.

⁶³ *Id.* The Court observed that Indian courts had historically applied proportionality in reviewing administrative action affecting freedoms under Articles 19 and 21, even where the terminology of proportionality was not expressly employed.

⁶⁴ *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.

⁶⁵ *Id.* The Court identified proper purpose, rational connection, necessity and proportionality *stricto sensu* or balancing as the four components of the doctrine.

treating the existence of a legitimate objective as automatically validating every means chosen to pursue it.⁶⁶

3. *K.S. Puttaswamy v. Union of India*: Proportionality and Privacy

The nine-judge decision in *K.S. Puttaswamy (Retd.) v. Union of India* transformed the constitutional significance of proportionality by recognising privacy as a constitutionally protected Fundamental Right.⁶⁷ The Court held that privacy is intrinsic to life and personal liberty and is closely connected with dignity, autonomy and individual choice.

Importantly, the judgment recognised that privacy is not an absolute right. Justice Chandrachud's opinion articulated a framework requiring an invasion of privacy to satisfy legality, a legitimate State aim and proportionality.⁶⁸ The existence of a legitimate objective alone was insufficient; there had to be a rational relationship between the means adopted and the objective pursued, and the intrusion had to remain proportionate to the purpose of the law.⁶⁹

This development is significant because proportionality became connected directly with the constitutional protection of **individual autonomy**. Judicial review was no longer concerned merely with whether the State possessed legal authority to regulate conduct; it also required examination of the justification and extent of interference with constitutionally protected personal choices.

4. *K.S. Puttaswamy (Aadhaar) v. Union of India*: Application and Contestation

The Aadhaar judgment provided one of the most extensive applications of proportionality in Indian constitutional law.⁷⁰ The majority examined whether the statutory Aadhaar framework satisfied the requirements of legality, legitimate State aim, suitability, necessity and balancing. The Court accepted targeted delivery of welfare benefits as a legitimate governmental objective and examined whether Aadhaar authentication was suitably connected with that objective.⁷¹

The majority also addressed necessity and concluded that, in the circumstances considered by it, no equally effective and less restrictive alternative had been demonstrated.⁷² The final stage involved balancing the competing constitutional interests, including privacy and the State's interest in delivering welfare benefits.⁷³

The decision is particularly important for this study because it illustrates that proportionality does not necessarily produce a predetermined result. Different judges may evaluate the same governmental measure differently because the doctrine contains inherently evaluative questions concerning effectiveness, alternatives, evidentiary material and the relative weight of competing interests. The

⁶⁶ *Id.* The necessity component requires consideration of alternative measures capable of achieving the same objective with a lesser degree of limitation upon the constitutional right.

⁶⁷ *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1. The nine-judge Bench recognised privacy as a constitutionally protected right connected with life, personal liberty, dignity and autonomy.

⁶⁸ *Id.* Justice S.K. Kaul's formulation, among others, described the requirements of legality, legitimate State aim and proportionality in reviewing an invasion of privacy.

⁶⁹ *Id.* The judgment explained that proportionality requires a rational nexus between the object pursued and the means adopted and protects against disproportionate interference with privacy.

⁷⁰ *K.S. Puttaswamy (Aadhaar) v. Union of India*, (2019) 1 SCC 1. The majority expressly applied the proportionality framework to the Aadhaar statutory scheme.

⁷¹ *Id.* The majority accepted targeted delivery of subsidies, benefits and services as a legitimate State objective and examined the relationship between Aadhaar authentication and that objective.

⁷² *Id.* The majority's necessity analysis considered whether a less restrictive but equally effective alternative existed and concluded that no such alternative had been established on the material before the Court.

⁷³ *Id.* The Court's balancing analysis expressly considered the competing interests in informational privacy and the effective delivery of welfare benefits.

Aadhaar litigation therefore demonstrates both the **structuring function and the discretionary dimension** of proportionality.

5. *Anuradha Bhasin v. Union of India*: Proportionality and Digital Freedoms

In *Anuradha Bhasin v. Union of India*, the Supreme Court applied proportionality in the context of restrictions affecting freedom of speech and expression and access to the internet.⁷⁴ The Court considered restrictions imposed in Jammu and Kashmir and examined whether measures restricting internet-based communication satisfied constitutional requirements.

The judgment expressly relied upon the proportionality framework developed through *Modern Dental* and *Puttaswamy (Aadhaar)*. It emphasised that restrictions affecting Fundamental Rights must pursue a legitimate aim, maintain a rational connection with that aim, and employ measures that are necessary and proportionate.⁷⁵ The Court also stressed that the proportionality standard applies to both the substantive and procedural dimensions of rights restrictions.⁷⁶

An important feature of the judgment was its concern with the **temporary and reviewable character of restrictions**. The Court required orders restricting internet services to be made available and subjected to review, and it rejected indefinite suspension as constitutionally permissible.⁷⁷ Thus, proportionality operated not only as a test of the substantive extent of interference but also as a means of requiring greater accountability in the exercise of State power.

6. *Internet and Mobile Association of India v. Reserve Bank of India*: Proportionality in Economic Regulation

The application of proportionality was extended beyond conventional civil liberties in *Internet and Mobile Association of India v. Reserve Bank of India*.⁷⁸ The case concerned the Reserve Bank of India's 2018 circular directing regulated entities not to provide banking services to persons or businesses dealing in virtual currencies.

The Court acknowledged the RBI's significant regulatory powers and its institutional role in the financial system. Nevertheless, it distinguished the **existence of regulatory power** from the constitutionality of the manner in which that power was exercised.⁷⁹ The Court examined whether the measure imposed an excessive burden in relation to the objective pursued and whether the RBI had demonstrated sufficient material connecting the restriction with the harms it sought to prevent.

Ultimately, the Court set aside the circular on proportionality grounds. The decision is significant because it demonstrates that proportionality does not disappear merely because State action concerns technical or economic regulation. At the same time, the judgment illustrates that proportionality can accommodate institutional deference: the Court did not deny the regulator's authority to act but

⁷⁴ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

⁷⁵ *Id.* The Court relied upon the proportionality framework developed in *Modern Dental* and *Puttaswamy (Aadhaar)*, including legitimate aim, rational connection, necessity and proportionality of the interference.

⁷⁶ *Id.* The judgment expressly stated that proportionality must be satisfied by both the procedural and substantive aspects of the law or action restricting Fundamental Rights.

⁷⁷ *Id.* The Court examined the legality, publication, reviewability and duration of orders restricting internet access, linking the exercise of State power to constitutional standards of necessity and proportionality.

⁷⁸ *Internet & Mobile Association of India v. Reserve Bank of India*, (2020) 10 SCC 274.

⁷⁹ *Id.* The Court expressly distinguished the existence of regulatory power from the manner and extent of its exercise and subjected the impugned RBI measure to proportionality review.

examined whether the particular measure chosen was adequately justified and proportionate to the objective.⁸⁰

Analytical Significance

The trajectory from *Om Kumar* to *Internet and Mobile Association of India* demonstrates the progressive constitutionalisation and expansion of proportionality. *Om Kumar* distinguished proportionality from deferential *Wednesbury* review; *Modern Dental* supplied a structured four-stage framework; *Puttaswamy* connected proportionality with privacy, dignity and autonomy; *Puttaswamy (Aadhaar)* demonstrated its application to complex competing constitutional interests; *Anuradha Bhasin* extended the doctrine to restrictions affecting digital freedoms; and *Internet and Mobile Association of India* applied it to specialised economic regulation.

The cases also reveal an important tension. Proportionality makes judicial reasoning more transparent by identifying the governmental objective, the connection between means and ends, available alternatives and the consequences for rights. Yet the necessity and balancing stages inevitably require judicial evaluation of evidence, alternatives and competing interests. Proportionality therefore strengthens the methodology of judicial review without eliminating judicial discretion.

This tension becomes central to the next stage of the present study: whether proportionality merely provides a structured form of rights review or whether its application risks drawing courts too deeply into questions traditionally regarded as matters of legislative and executive judgment.

VII. Proportionality and Specific Fundamental Rights

The constitutional significance of proportionality becomes clearer when examined in relation to particular Fundamental Rights. Although the doctrine provides a general framework for reviewing restrictions, its application varies according to the nature of the right, the constitutional text governing its limitation and the character of the State action under challenge. Articles 14, 19 and 21 are particularly significant because their development has produced an interconnected framework of equality, liberty and freedom. Proportionality operates within this framework rather than independently of it.

1. Article 14: Equality, Non-Arbitrariness and Proportionality

Article 14 guarantees equality before the law and equal protection of the laws. Traditionally, judicial review under Article 14 was strongly associated with the reasonable-classification test: a classification must be based on an intelligible differentia and that differentia must bear a rational nexus with the object sought to be achieved.⁸¹ The jurisprudence subsequently expanded beyond classification.

In *E.P. Royappa v. State of Tamil Nadu*, the Supreme Court associated equality with the rejection of arbitrary State action.⁸² The Court subsequently developed this principle in *Ajay Hasia v. Khalid Mujib Sehravardi*, treating arbitrariness as fundamentally incompatible with the constitutional

⁸⁰ *Id.* The Court concluded that the RBI's circular could not be sustained on proportionality grounds and consequently set it aside.

⁸¹ *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75; *Budhan Choudhry v. State of Bihar*, AIR 1955 SC 191.

⁸² *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3. The Court developed the relationship between equality and arbitrariness under Article 14.

guarantee of equality.⁸³ Article 14 therefore came to operate not merely as a prohibition against discriminatory classification but also as a substantive requirement that State action be rational and non-arbitrary.

The doctrine of manifest arbitrariness further expanded this dimension. In *Shayara Bano v. Union of India*, the Court held that legislation may be invalidated where it is manifestly arbitrary, including where it is capricious, irrational, without an adequate determining principle, or excessive and disproportionate.⁸⁴ The decision is particularly relevant to proportionality because it expressly identifies **excessiveness and disproportionality** as possible manifestations of arbitrariness.

Proportionality and Article 14 should nevertheless not be treated as identical doctrines. The arbitrariness principle asks whether State action is constitutionally irrational or capricious, whereas proportionality ordinarily requires a more structured examination of the objective, suitability, necessity and overall impact of the measure. The two doctrines may therefore overlap, particularly where excessive or disproportionate State action is challenged, but they perform analytically distinguishable functions.

2. Article 19: Freedom, Reasonable Restrictions and Proportionality

Article 19 provides a particularly direct constitutional setting for proportionality because the Constitution itself permits specified restrictions upon the freedoms guaranteed by Article 19(1). These restrictions must satisfy the conditions prescribed in Articles 19(2)–(6), including the requirement of reasonableness.⁸⁵

Article 19(1)(a): Freedom of Speech and Expression

Freedom of speech and expression under Article 19(1)(a) is subject to the grounds enumerated in Article 19(2). Consequently, proportionality review involves more than determining whether the State has a legitimate public objective. The objective must fall within the constitutionally permissible grounds of restriction, and the means adopted must bear an appropriate relationship to that objective.⁸⁶

In *Shreya Singhal v. Union of India*, the Supreme Court invalidated Section 66A of the Information Technology Act, 2000, finding that its restrictions on online expression were inconsistent with Article 19(1)(a).⁸⁷ The case demonstrates the importance of precision in rights restrictions: vague and overbroad restrictions can create a chilling effect on protected expression.

The application of proportionality to digital speech was made particularly explicit in *Anuradha Bhasin v. Union of India*. The Supreme Court held that freedom of speech and expression through the internet is constitutionally protected under Article 19(1)(a), while restrictions upon that freedom must comply with Article 19(2) and proportionality.⁸⁸ The decision therefore illustrates how proportionality operates in a technologically changing environment without altering the basic constitutional structure governing restrictions on speech.

⁸³ *Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722. The Court treated arbitrariness as antithetical to equality and explained that Article 14 strikes at arbitrary State action.

⁸⁴ *Shayara Bano v. Union of India*, (2017) 9 SCC 1. The Court stated that manifest arbitrariness includes legislative action that is capricious, irrational, without an adequate determining principle, or excessive and disproportionate.

⁸⁵ INDIA CONST. art. 19(2)–(6).

⁸⁶ *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353. The Court explained that proportionality is closely connected with the constitutional requirement of reasonable restrictions under Article 19.

⁸⁷ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

⁸⁸ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637. The Court held that speech and expression through the internet receives constitutional protection under Article 19(1)(a), and that restrictions must comply with Article 19(2), including proportionality.

Article 19(1)(g): Profession, Trade and Business

Article 19(1)(g) protects the freedom to practise any profession or to carry on any occupation, trade or business, subject to reasonable restrictions under Article 19(6).⁸⁹ The Supreme Court's decision in *Modern Dental College & Research Centre v. State of Madhya Pradesh* is particularly important in this context. The Court examined restrictions governing private professional educational institutions and expressly connected the requirement of reasonable restrictions under Article 19(6) with proportionality.⁹⁰

The judgment explained that proportionality involves balancing the individual's freedom against legitimate public interests and requires examination of the relationship between the restriction and its objective. The Court upheld regulatory measures relating to professional education after considering objectives including merit, transparency and prevention of malpractices.⁹¹

Article 19 therefore demonstrates particularly clearly that proportionality is not necessarily hostile to regulation. The constitutional question is not whether the State may regulate a protected activity, but whether the **particular restriction imposed is constitutionally justified and proportionate** to the permissible objective.

3. Article 21: Personal Liberty, Privacy and Dignity

Article 21 has become one of the principal constitutional contexts for substantive proportionality review. Following *Maneka Gandhi*, the procedure affecting life or personal liberty must be fair, just and reasonable rather than merely formally prescribed by law.⁹² This development created the foundation for later rights involving dignity, autonomy and privacy.

The recognition of privacy as a Fundamental Right in *K.S. Puttaswamy (Retd.) v. Union of India* significantly strengthened this framework.⁹³ The Court held that privacy is intrinsic to life and personal liberty and is closely connected with dignity, autonomy and individual choice. Importantly, an invasion of privacy cannot be justified merely by demonstrating the existence of governmental authority.

The Court articulated a requirement of legality, legitimate State aim and proportionality for an invasion of privacy.⁹⁴ The proportionality inquiry consequently protects not only physical liberty but also **informational and decisional autonomy**. State collection, use or disclosure of personal information may therefore engage constitutional concerns where it substantially affects an individual's ability to control personal information or make autonomous choices.

The privacy jurisprudence demonstrates the distinctive role of proportionality under Article 21. Because many contemporary interferences with liberty are regulatory or informational rather than physically coercive, proportionality provides a methodology through which courts can examine whether the State's legitimate objective justifies the extent of intrusion upon individual autonomy.

4. Interrelationship Between Articles 14, 19 and 21

⁸⁹ INDIA CONST. art. 19(1)(g), (6).

⁹⁰ *Modern Dental College*, (2016) 7 SCC 353. The Court expressly connected the reasonable-restriction requirement of Article 19(6) with proportionality.

⁹¹ *Id.* The Court considered objectives including merit, excellence, transparency and prevention of malpractices while assessing the restrictions imposed upon private professional educational institutions.

⁹² *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

⁹³ *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1. The nine-judge Bench recognised privacy as a constitutionally protected Fundamental Right connected with life, personal liberty, dignity and autonomy.

⁹⁴ *Id.* The Court articulated legality, legitimate State aim and proportionality as requirements for an invasion of privacy.

The relationship between Articles 14, 19 and 21 is central to understanding contemporary Fundamental Rights review. Before *Maneka Gandhi*, the Supreme Court had largely treated the rights as separate constitutional compartments. *Maneka Gandhi* rejected this rigid approach and established that a law affecting personal liberty could be tested through the combined requirements of Articles 14, 19 and 21.⁹⁵

This interrelationship may be understood as a constitutional triangle. Article 14 requires State action to satisfy equality and non-arbitrariness; Article 19 protects specified freedoms subject to constitutionally permitted reasonable restrictions; and Article 21 protects life and personal liberty through a requirement of fair, just and reasonable procedure. Proportionality provides a methodology capable of operating across these guarantees while respecting the particular textual limitations applicable to each right.

The significance of this relationship is that a single governmental measure may implicate more than one Fundamental Right. A restriction on digital communication, for example, may affect freedom of speech under Article 19(1)(a), equality under Article 14 and personal liberty or privacy under Article 21. Similarly, regulatory action affecting economic activity may engage Article 19(1)(g) while also raising questions of equality and arbitrariness under Article 14.

Proportionality therefore represents a development within, rather than outside, the *Maneka Gandhi* constitutional framework. It gives greater methodological structure to the substantive review of State action by requiring courts to examine the legitimacy of the State's objective, the relationship between means and ends, less restrictive alternatives and the overall impact upon the affected right.⁹⁶

The evolution from Articles 14, 19 and 21 to proportionality thus reflects a broader transformation in Indian constitutional adjudication: **equality restrains arbitrariness, Article 19 disciplines restrictions upon freedom, Article 21 protects substantive liberty and autonomy, while proportionality supplies a structured methodology for assessing whether State interference can be constitutionally justified.**

VIII. Critical Analysis of Proportionality-Based Judicial Review

The adoption of proportionality has significantly altered the methodology of Fundamental Rights adjudication in India. Unlike a purely formal inquiry into legislative authority, proportionality requires courts to examine the relationship between the State's objective, the means adopted and the resulting impact upon constitutional rights. The doctrine therefore strengthens the justificatory dimension of judicial review. At the same time, its application raises questions concerning judicial discretion, institutional competence, separation of powers and the appropriate limits of judicial balancing. Proportionality should consequently be evaluated not simply as a stronger form of rights protection, but as a constitutional methodology whose legitimacy depends upon disciplined judicial application.

A. Arguments Supporting Proportionality

1. Structured Judicial Reasoning

⁹⁵ *Maneka Gandhi*, (1978) 1 SCC 248.

⁹⁶ *Modern Dental College*, (2016) 7 SCC 353; *K.S. Puttaswamy (Retd.)*, (2017) 10 SCC 1; *Anuradha Bhasin*, (2020) 3 SCC 637. The Supreme Court's proportionality jurisprudence has developed across different Fundamental Rights while retaining the requirement that restrictions be constitutionally justified.

One of the principal advantages of proportionality is that it provides identifiable stages through which constitutional review can proceed. The four-stage framework requires examination of the legitimacy of the governmental objective, the rational connection between the measure and that objective, the availability of less restrictive alternatives, and the balance between the public purpose and the degree of rights infringement.⁹⁷

This structure can improve the quality of constitutional reasoning. Instead of concluding broadly that a restriction is or is not “reasonable,” courts can identify the particular stage at which the State's justification succeeds or fails. The methodology therefore makes judicial reasoning comparatively more systematic and enables parties to challenge specific components of the State's justification.

The structure, however, should not be mistaken for mathematical precision. The stages provide a framework for reasoning rather than an automatic formula capable of producing a single answer in every case.⁹⁸

2. Stronger Protection of Fundamental Rights

Proportionality can strengthen Fundamental Rights protection because it requires attention to the **extent of governmental interference**. The State may possess a legitimate objective, but legitimacy of the objective does not automatically establish the constitutionality of every measure adopted to achieve it.⁹⁹

The necessity stage is particularly significant. By requiring consideration of less restrictive alternatives, proportionality places a greater burden on the justification of measures that substantially interfere with constitutional rights. In this respect, the doctrine moves judicial review beyond the question of whether the State could act towards the question of **how far the State may constitutionally go**.

The Supreme Court's decisions concerning privacy, internet restrictions and economic regulation illustrate this rights-sensitive approach.¹⁰⁰

3. Transparency and a Culture of Justification

Proportionality also promotes what the Supreme Court has described as a “culture of justification.”¹⁰¹ Where State action restricts constitutional rights, governmental authority must be accompanied by reasons demonstrating why the restriction is constitutionally necessary.

This requirement is significant in a constitutional democracy because rights restrictions should not depend exclusively upon assertions of governmental expertise or authority. The proportionality framework requires the State to identify its objective and establish a connection between that objective and the restriction imposed. It consequently makes the constitutional justification for State action more visible to affected individuals, courts and the public.

⁹⁷ *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353. The Supreme Court formulated proportionality through the stages of legitimate aim, rational connection, necessity/minimal impairment and balancing.

⁹⁸ *Id.*; see also *K.S. Puttaswamy (Aadhaar) v. Union of India*, (2019) 1 SCC 1. The proportionality framework has been adapted in Indian constitutional jurisprudence rather than applied as an entirely rigid formula.

⁹⁹ *Modern Dental College*, (2016) 7 SCC 353.

¹⁰⁰ *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1; *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637; *Internet & Mobile Association of India v. Reserve Bank of India*, (2020) 10 SCC 274.

¹⁰¹ *Madhyamam Broadcasting Ltd. v. Union of India*, (2023) 5 SCC 421. The Supreme Court connected proportionality with a constitutional “culture of justification” requiring the State to justify rights-infringing action.

The transparency produced by proportionality is therefore not limited to the outcome of litigation. It concerns the **quality of constitutional reasoning** supporting the exercise of public power.

4. Consideration of Less Restrictive Alternatives

A further strength of proportionality is its explicit attention to alternatives. Under the necessity stage, the Court asks whether the legitimate governmental objective could be achieved through a measure that imposes a lesser burden upon the affected right while remaining sufficiently effective.¹⁰²

This is particularly important where the State adopts broad restrictions affecting large sections of the population. The existence of a legitimate public interest cannot by itself establish that the most restrictive available measure is constitutionally permissible. Necessity consequently introduces an important safeguard against excessive governmental intervention.

At the same time, determining whether an alternative is equally effective may require factual and technical assessment. This becomes particularly difficult where courts are reviewing complex economic, technological or security-related policies.

B. Concerns and Challenges

1. Judicial Discretion

The most significant difficulty with proportionality lies in the degree of discretion involved in its later stages. The legitimacy and rational-connection stages may sometimes be relatively straightforward, but necessity and balancing frequently require evaluative judgments.

Determining whether an alternative measure is “equally effective” involves assumptions concerning governmental effectiveness and available evidence. Similarly, balancing requires the Court to compare the importance of a public objective with the severity of interference with an individual's right. These judgments cannot always be reduced to objective measurements.

Consequently, proportionality does not eliminate judicial discretion; it **organises and exposes it**. The advantage is that the Court is required to explain its reasoning. The corresponding concern is that judges may reach different conclusions while applying the same doctrinal framework.

2. Institutional Competence

Proportionality can require courts to examine matters involving economic policy, public administration, technology, public health or national security. Such questions may involve technical evidence, resource allocation and predictive assessments for which legislative and executive institutions possess greater institutional capacity.

The concern is not that courts should never review such measures. Fundamental Rights necessarily impose constitutional limits upon governmental power. The difficulty arises when proportionality review moves from asking whether a measure is constitutionally permissible to determining which policy alternative would be **most effective or desirable**.

The distinction between constitutional review and policy substitution is therefore crucial. Courts may examine whether the State has established a sufficient constitutional justification without necessarily assuming responsibility for designing the government's preferred policy.

3. Separation of Powers

¹⁰² *Modern Dental College*, (2016) 7 SCC 353; *K.S. Puttaswamy (Aadhaar)*, (2019) 1 SCC 1. The necessity stage asks whether a less restrictive but equally effective alternative is available.

Proportionality also raises a question concerning the constitutional allocation of functions among the legislature, executive and judiciary. Legislatures ordinarily possess democratic authority to identify public problems and select policy responses, while executives possess expertise in implementation and administration. Judicial review exists to ensure that these powers remain within constitutional boundaries.

The difficulty is determining the appropriate intensity of judicial scrutiny. Excessive deference may permit serious rights violations to escape effective review; excessive intervention may transform judicial review into judicial policymaking.

The proportionality framework therefore requires a distinction between **constitutional evaluation and policy choice**. The Court's task is to determine whether the State's chosen measure is constitutionally justified, not ordinarily to select its preferred policy merely because another approach appears more desirable.

4. Uncertainty in Application

Although proportionality provides a common vocabulary, its application has not always been entirely uniform. The Supreme Court has described the four-stage framework as involving legitimate aim, rational connection, necessity and balancing, while subsequent judgments have modified or supplemented the approach in particular contexts.¹⁰³

For example, *Gujarat Mazdoor Sabha v. State of Gujarat* introduced an additional concern regarding safeguards against abuse of a rights-infringing measure.¹⁰⁴ A later Supreme Court judgment similarly observed that proportionality should not be applied mechanically and referred to the development of additional safeguards in the jurisprudence.¹⁰⁵

This flexibility can be advantageous because constitutional rights arise in diverse contexts. However, excessive methodological variation can make it difficult to predict the intensity of review that a particular governmental measure will receive. The legitimacy of proportionality therefore depends partly upon courts explaining **why a particular level of scrutiny is appropriate in a particular constitutional context**.

5. The Balancing Problem

The final and most difficult stage is balancing. Proportionality requires courts to determine whether the benefits associated with achieving the governmental objective justify the harm caused to the affected Fundamental Right.¹⁰⁶ This raises a fundamental question: **how should constitutional interests of different kinds be assigned relative weight?**

Unlike mathematical proportionality, constitutional balancing does not operate through universally accepted numerical values. The importance of privacy, speech, equality, economic regulation, public safety or other constitutional interests cannot simply be converted into equivalent units.

This does not make balancing illegitimate. Constitutional adjudication necessarily involves conflicts between competing interests. The difficulty is that balancing may conceal substantive value

¹⁰³ *K.S. Puttaswamy (Aadhaar)*, (2019) 1 SCC 1; *Gujarat Mazdoor Sabha v. State of Gujarat*, (2020) 10 SCC 459.

¹⁰⁴ *Gujarat Mazdoor Sabha v. State of Gujarat*, (2020) 10 SCC 459. The Court added safeguards against abuse as a further consideration in its proportionality analysis. The Supreme Court has subsequently noted this development.

¹⁰⁵ *State of T.N. v. National South Indian River Interlinking Agriculturist Ass'n*, (2021) 15 SCC 534; see also *Ramesh Chandra Sharma v. State of Uttar Pradesh*, 2023 SCC OnLine SC 162. A later Supreme Court judgment has cautioned that proportionality should not be applied mechanically.

¹⁰⁶ *Modern Dental College*, (2016) 7 SCC 353; *K.S. Puttaswamy (Aadhaar)*, (2019) 1 SCC 1. Balancing forms the final stage of the proportionality inquiry.

judgments behind the language of proportionality. Judicial legitimacy therefore depends upon courts identifying the relevant rights, interests and evidence and explaining why the degree of interference is justified rather than merely asserting that the public interest outweighs the individual right.

C. Overall Assessment

Proportionality should therefore neither be characterised as an infallible formula nor dismissed as unconstrained judicial balancing. Its principal contribution lies in **disciplining constitutional justification**. It requires the State to identify a constitutionally legitimate objective, establish a rational relationship between its means and ends, confront the possibility of less restrictive alternatives and justify the ultimate impact upon the affected right.

At the same time, the doctrine cannot eliminate the institutional difficulties inherent in constitutional adjudication. Necessity and balancing inevitably involve judicial evaluation, and the intensity of that evaluation must be reconciled with legislative choice, executive expertise and separation of powers.

The central question is consequently not whether proportionality gives courts more power in the abstract, but **how that power is exercised and constrained through principled reasoning**. Properly applied, proportionality can make rights adjudication more transparent and structured without requiring courts to become substitute policymakers. Its continuing challenge is to maintain that balance between effective protection of Fundamental Rights and respect for the constitutional functions of other branches of government.

IX. Comparative Perspective

The development of proportionality in India can be better understood by examining its relationship with constitutional review models in Germany, the United Kingdom and the United States. Although proportionality has important European origins, the Indian Supreme Court has incorporated the doctrine within an existing constitutional framework shaped by Articles 14, 19 and 21, reasonableness, arbitrariness and judicial review. A comparison therefore helps determine whether Indian proportionality represents a direct transplantation of foreign doctrine or an adaptation to India's constitutional structure.

1. Germany: Proportionality as a Developed Constitutional Doctrine

Germany represents one of the most developed constitutional applications of proportionality. The doctrine is closely associated with the jurisprudence of the Federal Constitutional Court and operates as a general principle governing limitations upon constitutional rights. German proportionality analysis ordinarily examines four connected requirements: the measure must pursue a legitimate objective, be suitable or capable of advancing that objective, be necessary in the sense that no equally effective less restrictive measure is available, and remain proportionate in the strict sense, requiring a balancing of the competing interests.¹⁰⁷

The German approach therefore provides a structured methodology for examining restrictions upon constitutional rights. The final balancing stage requires consideration of the seriousness of the interference with the right in relation to the importance of the public objective pursued. Proportionality consequently operates not merely as a test of whether governmental action is rational,

¹⁰⁷ See generally Robert Alexy, *A Theory of Constitutional Rights* 66–69 (Julian Rivers trans., Oxford Univ. Press 2002); Federal Constitutional Court [Bundesverfassungsgericht], *Apothekenurteil*, BVerfGE 7, 377 (1958).

but as a substantive standard for determining whether the burden imposed upon an individual is constitutionally justified.¹⁰⁸

This model has had considerable influence on proportionality jurisprudence beyond Germany. However, its application in India has not occurred in an identical constitutional setting. The Indian Constitution contains express limitation clauses in Article 19 and distinct guarantees under Articles 14 and 21. Consequently, Indian courts have adapted proportionality to an existing rights-review framework rather than simply reproducing the German constitutional model.

2. United Kingdom: Proportionality and Reasonableness Review

The United Kingdom provides a different comparative model because its constitutional system historically developed judicial review through administrative-law principles rather than a single written constitutional text containing a comprehensive catalogue of enforceable Fundamental Rights. Traditional judicial review was strongly associated with the *Wednesbury* standard of reasonableness, under which administrative action could be invalidated where it was so unreasonable that no reasonable authority could have adopted it.¹⁰⁹

Following the incorporation of Convention rights through the Human Rights Act 1998, proportionality became increasingly important in reviewing measures affecting Convention rights. The courts developed a more structured inquiry into whether an interference pursued a legitimate objective, was rationally connected to that objective, went no further than necessary, and maintained a fair balance between the individual right and the public interest.¹¹⁰

The relationship between proportionality and traditional reasonableness review remains significant. Proportionality generally involves a more structured and rights-focused inquiry than traditional *Wednesbury* review, particularly because it requires consideration of the intensity of the interference and whether less restrictive alternatives are available.¹¹¹ At the same time, the UK experience demonstrates that proportionality does not necessarily eliminate judicial restraint. Questions concerning institutional competence, legislative judgment and the appropriate intensity of review continue to influence its application.

3. United States: Standards of Constitutional Scrutiny

The United States follows a substantially different model. Rather than adopting proportionality as a single general constitutional doctrine, the Supreme Court has developed different levels of scrutiny depending upon the nature of the right or classification under challenge. The principal standards are rational-basis review, intermediate scrutiny and strict scrutiny.¹¹²

Under rational-basis review, governmental classification or regulation is generally upheld if it is rationally related to a legitimate governmental interest. Intermediate scrutiny requires a closer relationship between the governmental objective and the means adopted, particularly in areas such as certain classifications affecting equality. Strict scrutiny imposes the most demanding form of review,

¹⁰⁸ See generally Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* 131–39 (Cambridge Univ. Press 2012).

¹⁰⁹ *Associated Provincial Picture Houses Ltd. v. Wednesbury Corp.*, [1948] 1 K.B. 223 (C.A.).

¹¹⁰ *Bank Mellat v. Her Majesty's Treasury (No. 2)*, [2013] UKSC 39, [2014] A.C. 700; *R. (Daly) v. Sec'y of State for the Home Dep't*, [2001] 2 A.C. 532 (H.L.).

¹¹¹ *R. (Daly)*, [2001] 2 A.C. 532; *Bank Mellat (No. 2)*, [2013] UKSC 39.

¹¹² *United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938); *Craig v. Boren*, 429 U.S. 190, 197 (1976); *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995).

generally requiring the government to demonstrate that the measure serves a compelling governmental interest and is narrowly tailored to achieve that interest.¹¹³

The American approach therefore shares certain features with proportionality, particularly its concern with the relationship between governmental objectives and the means adopted to achieve them. However, the structure differs. The intensity of scrutiny is substantially influenced by the category of right or classification involved, whereas proportionality ordinarily proceeds through a sequence of questions concerning legitimate aim, suitability, necessity and balancing.¹¹⁴

Thus, the United States illustrates an alternative method of calibrating judicial review: rather than applying one general proportionality test across constitutional rights, constitutional scrutiny varies according to established doctrinal categories.

4. India: Towards a Distinct Constitutional Model

The Indian approach contains elements that can be compared with all three systems but cannot be reduced entirely to any one of them. The Supreme Court initially developed proportionality in the context of administrative law in *Om Kumar v. Union of India*, distinguishing proportionality review from the traditional *Wednesbury* standard.¹¹⁵ The doctrine subsequently received a more structured constitutional formulation in *Modern Dental College & Research Centre v. State of Madhya Pradesh*, where the Court identified legitimate purpose, rational connection, necessity and balancing as components of proportionality review.¹¹⁶

The doctrine was subsequently applied to privacy and other Fundamental Rights in *K.S. Puttaswamy (Retd.) v. Union of India* and *K.S. Puttaswamy (Aadhaar) v. Union of India*. The Aadhaar judgment particularly demonstrated how proportionality could be used to examine whether State measures affecting privacy and personal autonomy were constitutionally justified.¹¹⁷ Later decisions, including *Anuradha Bhasin v. Union of India*, applied proportionality to restrictions affecting freedom of speech and expression and the use of the internet.¹¹⁸

The Indian model therefore differs from the German approach in an important respect. Although the structure of the Indian proportionality test resembles the European formulation, Indian proportionality operates within a constitutional framework already shaped by Articles 14, 19 and 21. The doctrine interacts with reasonableness, non-arbitrariness, procedural fairness and the constitutional remedies provided under Articles 32 and 226.¹¹⁹

India also differs from the United Kingdom. While Indian jurisprudence has engaged with *Wednesbury* reasoning, proportionality has increasingly become an explicit constitutional methodology for reviewing restrictions upon Fundamental Rights rather than merely an administrative-law technique associated with Convention rights.

Similarly, the Indian system does not reproduce the American tiered-scrutiny model. Indian courts do not ordinarily classify every Fundamental Rights challenge into a fixed hierarchy corresponding to rational-basis, intermediate or strict scrutiny. Instead, the intensity and structure of review depend

¹¹³ *United States v. Virginia*, 518 U.S. 515, 531–33 (1996); *Adarand Constructors*, 515 U.S. at 227.

¹¹⁴ See generally Barak, *supra* note 2, at 471–73.

¹¹⁵ *Om Kumar v. Union of India*, (2001) 2 SCC 386.

¹¹⁶ *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.

¹¹⁷ *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1; *K.S. Puttaswamy (Aadhaar) v. Union of India*, (2019) 1 SCC 1.

¹¹⁸ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

¹¹⁹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248; *Modern Dental*, (2016) 7 SCC 353.

substantially upon the right affected, the nature of the State action and the constitutional provision invoked.

Comparative Assessment: Towards a Uniquely Indian Model?

The comparative analysis suggests that Indian proportionality has **European structural influences but an Indian constitutional context**. The four-stage framework articulated in *Modern Dental* bears a clear resemblance to the established proportionality methodology associated with Germany and other European jurisdictions. However, its operation is mediated through India's distinctive constitutional architecture.¹²⁰

Three features are particularly significant. First, proportionality in India exists alongside the doctrine of reasonableness under Article 19 and the broader anti-arbitrariness principle developed under Article 14. Secondly, Article 21 jurisprudence has transformed proportionality into an important method for reviewing State interference with privacy, dignity, autonomy and personal liberty. Thirdly, Indian proportionality has developed through judicial interpretation rather than through an express constitutional provision establishing proportionality as a general test.

Accordingly, it would be inaccurate to characterise Indian proportionality as either a complete transplantation of the European model or an entirely independent doctrine. It is better understood as an **adapted constitutional methodology**: the structural logic of proportionality has been influenced by comparative jurisprudence, while its substantive operation has been shaped by India's own Fundamental Rights jurisprudence.

The comparative perspective therefore supports the proposition that India is developing a distinctive form of proportionality review. Its central framework resembles the European model, but its interaction with Articles 14, 19 and 21, the doctrine of arbitrariness, constitutional remedies and the Basic Structure Doctrine gives Indian proportionality a constitutional character of its own. The resulting model combines structured rights review with the broader Indian tradition of substantive constitutional adjudication.

X. Contemporary Challenges and Emerging Questions

The contemporary application of proportionality presents challenges that were less prominent during the early development of Fundamental Rights jurisprudence. Increasing digitisation of governance, national-security concerns, public-health emergencies, economic regulation and algorithmic decision-making have expanded the contexts in which State action may interfere with individual rights. These developments require courts to determine not only whether a restriction pursues a legitimate objective, but also whether the means adopted remain necessary, proportionate and subject to adequate safeguards.

1. Digital Rights

The digital environment has significantly expanded the scope of constitutional rights review. Restrictions upon internet access directly implicate freedom of speech and expression under Article 19(1)(a), as well as the ability to access information and participate in social, economic and political life. In *Anuradha Bhasin v. Union of India*, the Supreme Court recognised that freedom of speech and expression and freedom to carry on trade or business through the internet are constitutionally protected interests and held that restrictions on internet access must satisfy constitutional

¹²⁰ *Modern Dental*, (2016) 7 SCC 353; *K.S. Puttaswamy (Aadhaar)*, (2019) 1 SCC 1.

requirements of legality, necessity and proportionality.¹²¹ The Court also emphasised the temporary nature and periodic review of internet restrictions, thereby linking proportionality with procedural safeguards.¹²²

Digital rights also raise questions concerning surveillance and informational privacy. In *K.S. Puttaswamy (Retd.) v. Union of India*, the Supreme Court recognised privacy as a constitutionally protected right connected with dignity, liberty and individual autonomy.¹²³ Restrictions upon privacy therefore require constitutional justification rather than merely executive assertion of administrative necessity. Surveillance measures may pursue legitimate objectives such as national security or prevention of crime, but proportionality requires consideration of the extent of intrusion, the effectiveness of the measure and the availability of less intrusive alternatives.

Data protection presents a related challenge. The Digital Personal Data Protection Act, 2023 establishes a statutory framework governing the processing of digital personal data, while constitutional privacy jurisprudence provides a broader rights-based framework.¹²⁴ The emerging question for proportionality review is whether State collection, retention and processing of personal data are sufficiently connected to legitimate objectives and whether adequate safeguards exist against excessive or unjustified intrusion.

2. National Security

National security represents one of the most difficult contexts for proportionality because the State may possess information, expertise and operational considerations that cannot always be fully disclosed in judicial proceedings. At the same time, national security cannot automatically place governmental action beyond constitutional scrutiny. The central constitutional question is therefore one of **intensity of review**: how closely should courts examine restrictions justified by national-security considerations while recognising legitimate institutional limitations?

The Supreme Court's jurisprudence demonstrates that national security may constitute a legitimate governmental objective, but the existence of such an objective does not by itself establish the proportionality of every measure adopted in its name. In *Anuradha Bhasin*, the Court examined restrictions imposed in Jammu and Kashmir and required restrictions affecting fundamental freedoms to satisfy constitutional standards of proportionality, including requirements concerning temporariness and review.¹²⁵ Similarly, the broader privacy jurisprudence indicates that even important State interests must be assessed within a constitutional framework of legality, legitimate purpose and proportionality.¹²⁶

The contemporary challenge therefore lies in maintaining meaningful judicial review without requiring courts to substitute their institutional judgment for that of the executive on matters involving specialised security assessments. Proportionality can provide a framework for asking whether the restriction is legally authorised, connected to the stated objective, necessary and accompanied by safeguards, while leaving appropriate space for legitimate executive expertise.

¹²¹ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

¹²² *Id.*; *Foundation for Media Professionals v. Union Territory of J&K*, (2020) 5 SCC 746. The Supreme Court required consideration of the proportionality of continuing restrictions and directed a mechanism for review.

¹²³ *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1. The Supreme Court's subsequent jurisprudence describes *Puttaswamy* as establishing privacy as a constitutional right connected with liberty, dignity and autonomy.

¹²⁴ Digital Personal Data Protection Act, No. 22 of 2023, Gazette of India, Aug. 11, 2023.

¹²⁵ *Anuradha Bhasin*, (2020) 3 SCC 637. The Court specifically connected internet restrictions with proportionality, temporariness and review.

¹²⁶ *K.S. Puttaswamy (Retd.)*, (2017) 10 SCC 1; *K.S. Puttaswamy (Aadhaar) v. Union of India*, (2019) 1 SCC 1.

3. Public Health and Emergencies

Public-health emergencies illustrate the tension between individual liberty and collective interests. Measures such as movement restrictions, quarantine requirements, compulsory health measures or restrictions upon commercial activity may interfere with liberty, privacy, occupation and other constitutional interests while pursuing the protection of public health.

The proportionality framework is particularly relevant in such circumstances because the existence of a public-health objective does not necessarily determine the constitutional validity of every measure adopted to pursue it. Courts may examine whether the measure has a rational connection with the public-health objective, whether less restrictive alternatives were reasonably available, and whether the extent and duration of the interference correspond to the seriousness of the threat.

Emergency conditions may justify restrictions that would be difficult to justify under ordinary circumstances, but proportionality does not disappear during an emergency. Instead, the nature of the objective, the available scientific evidence, the duration of the measure and the safeguards accompanying the restriction become important considerations. This approach permits constitutional review while recognising that courts may have limited institutional capacity to determine technical questions of epidemiology or public-health policy.

4. Economic Regulation

Economic regulation provides another important area for proportionality review, particularly under Article 19(1)(g), which protects the freedom to practise any profession or to carry on any occupation, trade or business, subject to the restrictions permitted by Article 19(6).

In *Modern Dental College & Research Centre v. State of Madhya Pradesh*, the Supreme Court applied proportionality in assessing regulatory restrictions affecting the freedom of occupation and recognised that the State may pursue legitimate social and regulatory objectives while remaining subject to constitutional limitations.¹²⁷ The Court's reasoning demonstrates that proportionality does not render economic regulation constitutionally impermissible merely because it imposes burdens upon economic activity. The question is whether the restriction bears an appropriate relationship to the legitimate objective pursued.

The decision in *Internet and Mobile Association of India v. Reserve Bank of India* provides another illustration. The Supreme Court accepted the importance of regulatory objectives but examined whether the particular restriction adopted by the regulator was proportionate to the objective.¹²⁸ The case demonstrates the relevance of proportionality to technologically evolving markets in which regulatory intervention may have substantial consequences for economic liberty.

The principal emerging difficulty is institutional competence. Economic regulators frequently possess specialised knowledge concerning markets and financial systems. Judicial review must therefore distinguish between examining the constitutional proportionality of a restriction and replacing the regulator's technical or policy judgment with the Court's own preferred approach.

5. Algorithmic and Technological Governance

The increasing use of algorithms, automated systems and artificial intelligence in governance raises a new generation of constitutional questions. Government decisions may increasingly involve automated risk assessment, allocation of public benefits, identity verification, fraud detection,

¹²⁷ *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.

¹²⁸ *Internet & Mobile Association of India v. Reserve Bank of India*, (2020) 10 SCC 274.

predictive systems and other forms of data-driven decision-making. The constitutional difficulty is that an individual affected by an automated decision may not always know how the decision was reached, what data was used or whether the system contains discriminatory or inaccurate assumptions.

These concerns can be examined through existing Fundamental Rights principles. Article 14 provides protection against arbitrary and discriminatory State action, while Articles 19 and 21 may become relevant where automated governmental decisions affect speech, occupation, liberty, privacy or personal autonomy.¹²⁹ The right to privacy recognised in *Puttaswamy* is particularly significant where governmental systems involve large-scale collection, analysis or profiling of personal information.¹³⁰

Proportionality could provide a useful framework for reviewing such systems. First, the State would need to identify the legitimate objective pursued through the technological system. Secondly, there must be a rational connection between the algorithmic measure and that objective. Thirdly, the State may have to demonstrate that a less intrusive or less discriminatory technological alternative is not reasonably available. Finally, the Court may have to assess whether the benefits produced by the system justify its impact upon affected rights.

Algorithmic governance nevertheless presents difficulties that conventional proportionality review may not fully resolve. The problem may not always be the objective or even the general design of the measure, but the quality of the underlying data, hidden assumptions within the model, discriminatory outcomes, lack of explainability or absence of meaningful human oversight. A formally legitimate algorithm may therefore produce constitutionally problematic results.

This raises an important emerging question: **Can proportionality effectively review governmental decisions when the State itself cannot fully explain the operation of the technological system on which the decision depends?** If constitutional review requires governmental justification, algorithmic opacity may create a serious challenge to the traditional relationship between State power and judicial review. Recent institutional discussions within the Indian judiciary also demonstrate that AI and digital tools are becoming increasingly relevant to legal and governmental processes, while emphasising the importance of retaining human institutional control and judicial reasoning.¹³¹

6. Emerging Constitutional Questions

These developments demonstrate that the future of proportionality in India will involve more than determining whether a conventional law or executive order imposes an excessive restriction on an individual right. The doctrine will increasingly confront situations involving competing rights, technologically mediated State action, confidential information, emergency decision-making and complex regulatory choices.

Three questions are particularly significant. First, **how intensive should judicial review be when the State invokes expertise, national security or technological complexity?** Secondly, **what evidentiary standards should courts require from the State when determining necessity and the availability of less restrictive alternatives?** Thirdly, **how can proportionality remain meaningful when the consequences of State action are produced through complex technological systems that may be difficult for both individuals and courts to understand?**

¹²⁹ *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3; *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

¹³⁰ *K.S. Puttaswamy (Retd.)*, (2017) 10 SCC 1.

¹³¹ Supreme Court of India, *National Conference on Judicial Process Re-engineering and Digital Transformation* (Apr. 11–12, 2026). The conference discussions addressed AI and digital tools, including the need for technology to remain an aid rather than a substitute for judicial reasoning and concerns regarding data confidentiality.

The answers to these questions will determine whether proportionality functions merely as a formal sequence of constitutional questions or as a meaningful requirement of governmental justification. The contemporary challenge is therefore to preserve the structured reasoning of proportionality while adapting it to contexts in which governmental power is increasingly exercised through data, technology, regulation and emergency measures.

XI. Findings and Suggestions

The preceding analysis demonstrates that judicial review of Fundamental Rights in India has undergone a significant doctrinal transformation. The Supreme Court has moved from a predominantly formal examination of constitutional validity towards a more substantive inquiry into fairness, reasonableness, non-arbitrariness and, increasingly, proportionality. At the same time, the development of proportionality has created questions concerning judicial discretion, institutional competence, separation of powers and consistency in constitutional adjudication. The following findings and doctrinal suggestions emerge from the study.

1. Greater Clarity Regarding the Stages of Proportionality

The study finds that proportionality has acquired a recognisable structure in Indian constitutional jurisprudence, particularly following *Modern Dental College & Research Centre v. State of Madhya Pradesh*. The Court identified legitimate purpose, rational connection, necessity and balancing as important components of the inquiry.¹³² Subsequent decisions have further developed or adapted the framework in particular contexts.

However, the application of proportionality has not always followed a uniform sequence. Courts may place different emphasis upon legality, legitimate aim, necessity, safeguards or balancing depending upon the nature of the right and the governmental measure involved. Greater doctrinal clarity would therefore be useful. Courts should ordinarily identify each stage of the proportionality inquiry separately and explain whether the measure satisfies that stage. This would make constitutional reasoning more transparent without requiring proportionality to become an inflexible formula.

2. Consistent Identification of the Standard of Review

The intensity of judicial review is an important but sometimes underdeveloped aspect of proportionality jurisprudence. *Om Kumar v. Union of India* distinguished proportionality review from the traditional *Wednesbury* approach, particularly in relation to administrative action affecting fundamental freedoms.¹³³ Subsequent constitutional cases have applied proportionality in different contexts involving privacy, speech, economic regulation and other rights.¹³⁴

The study suggests that courts should expressly identify the level and intensity of review appropriate to the case. A restriction affecting the core of a Fundamental Right may require more rigorous scrutiny than a measure involving technical economic regulation or complex administrative choices. Stating the applicable standard at the beginning of the analysis would help courts maintain an appropriate balance between effective rights protection and institutional restraint.

3. Clearer Distinction Between Judicial Review and Substitution of Policy

¹³² *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.

¹³³ *Om Kumar v. Union of India*, (2001) 2 SCC 386.

¹³⁴ See *K.S. Puttaswamy (Aadhaar) v. Union of India*, (2019) 1 SCC 1; *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637; *Internet & Mobile Association of India v. Reserve Bank of India*, (2020) 10 SCC 274.

Proportionality necessarily requires courts to examine the relationship between governmental objectives and the means adopted. However, such examination should not ordinarily become an invitation for courts to select the policy option they consider preferable.

The distinction is particularly important in areas involving economic regulation, public health, national security and technical administration. The judicial task is to determine whether the governmental measure falls within constitutional limits, rather than to formulate an alternative policy.¹³⁵ A proportionality analysis should therefore identify the constitutional defect in the impugned measure rather than merely demonstrate that another policy might be more effective or desirable.

This distinction preserves the constitutional role of judicial review while recognising the institutional responsibilities of the legislature and executive.

4. Greater Consideration of Less Restrictive Alternatives

One of the most significant contributions of proportionality is its necessity requirement. A measure may pursue a legitimate objective and be rationally connected to that objective but nevertheless fail constitutional scrutiny if an equally effective and less rights-restrictive alternative is reasonably available.¹³⁶

The study therefore suggests that courts should require meaningful consideration of alternatives whenever necessity forms part of the applicable constitutional inquiry. At the same time, the burden should not be understood mechanically. Courts may lack the institutional capacity to identify the most effective alternative in technically complex matters. The appropriate inquiry should instead focus on whether the State has provided a rational justification for rejecting reasonably available less restrictive alternatives.

This approach would prevent the necessity stage from becoming merely a formal statement that no alternative exists.

5. Transparent Balancing of Competing Constitutional Interests

Balancing represents the most evaluative stage of proportionality. It requires consideration of the importance of the governmental objective against the severity of the interference with the protected right.¹³⁷ Because this stage involves constitutional judgment, unexplained balancing may create uncertainty and make judicial reasoning difficult to scrutinise.

Courts should therefore articulate the relevant considerations when undertaking balancing. These may include the nature and importance of the right, the intensity and duration of the interference, the significance of the governmental objective, the effectiveness of the measure, the availability of safeguards and the consequences of less restrictive alternatives.

Such reasoning would not transform balancing into a mathematical exercise. Rather, it would make the value judgments inherent in constitutional adjudication more visible and therefore subject to principled legal scrutiny. This is consistent with the broader conception of proportionality as promoting a constitutional “culture of justification.”¹³⁸

6. Development of Proportionality Jurisprudence in Emerging Technological Contexts

¹³⁵ See *Modern Dental*, (2016) 7 SCC 353; *Gujarat Mazdoor Sabha v. State of Gujarat*, (2020) 10 SCC 459.

¹³⁶ *Modern Dental*, (2016) 7 SCC 353; *K.S. Puttaswamy (Aadhaar)*, (2019) 1 SCC 1.

¹³⁷ *Modern Dental*, (2016) 7 SCC 353.

¹³⁸ *Madhyamam Broadcasting Ltd. v. Union of India*, (2023) 5 SCC 421.

The increasing use of digital systems, large-scale data processing and artificial intelligence by public authorities creates new challenges for Fundamental Rights review. Existing principles under Articles 14, 19 and 21 provide an important constitutional foundation, particularly in relation to arbitrariness, speech, privacy, dignity and personal autonomy.¹³⁹ However, traditional proportionality analysis may encounter additional difficulties where governmental decisions depend upon complex or opaque technological systems.

Future jurisprudence may therefore need to clarify how proportionality applies to algorithmic decision-making, automated governmental decisions, predictive systems and technologically assisted surveillance. Questions of data quality, algorithmic bias, explainability, human oversight and procedural safeguards may become relevant to determining whether a measure is genuinely suitable, necessary and proportionate.

The constitutional inquiry should not depend solely upon whether an algorithm is technologically sophisticated. The essential question remains whether the State can constitutionally justify the interference produced by the system and provide adequate safeguards against arbitrary or disproportionate consequences.

7. Findings of the Study

The study produces five principal findings.

First, judicial review of Fundamental Rights in India has evolved from a relatively formal model towards substantive constitutional scrutiny. The transition from *A.K. Gopalan* to *Maneka Gandhi* illustrates the movement from compartmentalised rights analysis towards an integrated understanding of Articles 14, 19 and 21.¹⁴⁰

Secondly, proportionality has emerged as an important methodology for examining restrictions upon Fundamental Rights. Its development through *Om Kumar*, *Modern Dental*, *Puttaswamy* and subsequent decisions demonstrates an increasing emphasis upon structured constitutional justification.¹⁴¹

Thirdly, proportionality has not eliminated judicial discretion. The stages of legitimacy, necessity and balancing continue to require judicial evaluation. Its principal contribution is therefore not the removal of discretion but the structuring and disclosure of the reasoning through which that discretion is exercised.

Fourthly, proportionality must operate consistently with separation of powers. Effective constitutional review requires courts to scrutinise rights-infringing governmental action, but constitutional adjudication should not become an unrestricted exercise in judicial policy selection.

Finally, the future development of proportionality will increasingly be tested by emerging forms of State power, particularly digital governance, surveillance, data processing and algorithmic decision-making. The doctrine will therefore need to remain sufficiently structured to constrain governmental power while sufficiently flexible to respond to technologically complex forms of rights interference.

8. Overall Suggestion

¹³⁹ *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3; *Shreya Singhal v. Union of India*, (2015) 5 SCC 1; *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

¹⁴⁰ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27; *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

¹⁴¹ *Om Kumar*, (2001) 2 SCC 386; *Modern Dental*, (2016) 7 SCC 353; *K.S. Puttaswamy (Retd.)*, (2017) 10 SCC 1; *K.S. Puttaswamy (Aadhaar)*, (2019) 1 SCC 1.

The study suggests that the future development of Indian proportionality jurisprudence should focus less on expanding the doctrine into an unrestricted general power of judicial balancing and more on improving the **quality, consistency and transparency of constitutional reasoning**. A coherent proportionality methodology can strengthen Fundamental Rights protection while preserving appropriate institutional boundaries if courts clearly identify the right affected, the governmental objective, the means employed, the availability of less restrictive alternatives and the reasons supporting the final constitutional conclusion.

Proportionality should consequently be understood not as a replacement for all existing forms of Fundamental Rights review, but as a structured methodology operating within India's broader constitutional framework. Its legitimacy will ultimately depend upon whether it can provide meaningful protection against disproportionate State action without transforming judicial review into judicial substitution of legislative or executive judgment.

XII. Conclusion

The evolution of judicial review of Fundamental Rights in India reflects a broader transformation in the relationship between constitutional supremacy, governmental power and individual liberty. At the commencement of the constitutional era, judicial review was principally concerned with determining whether legislative and executive action conformed to the formal requirements of the Constitution. Over time, however, the Supreme Court progressively developed a more substantive conception of constitutional scrutiny, under which the mere existence of legal authority was not always sufficient to sustain an interference with Fundamental Rights.

The early jurisprudence established the constitutional foundations of this process. *A.K. Gopalan v. State of Madras* reflected a relatively compartmentalised understanding of Fundamental Rights and treated the guarantees contained in Part III as substantially distinct constitutional protections.¹⁴² The subsequent cases concerning Parliament's amending power transformed the broader understanding of constitutional supremacy. *I.C. Golaknath v. State of Punjab* placed significant limitations upon Parliament's ability to amend Fundamental Rights, while *Kesavananda Bharati v. State of Kerala* reconciled Parliament's constituent power with constitutional supremacy through the Basic Structure Doctrine.¹⁴³ *Indira Nehru Gandhi v. Raj Narain* and *Minerva Mills Ltd. v. Union of India* subsequently reinforced the principle that judicial review itself forms part of the constitutional structure and that constitutional power cannot be exercised in a manner that destroys fundamental constitutional principles.¹⁴⁴

The transformation of rights adjudication subsequently occurred through the substantive interpretation of Fundamental Rights. *Maneka Gandhi v. Union of India* represented a decisive development by establishing a closer relationship among Articles 14, 19 and 21 and requiring State action affecting personal liberty to satisfy standards of fairness, reasonableness and non-arbitrariness.¹⁴⁵ Article 14 consequently developed beyond a narrow conception of classification, while Article 21 expanded from a procedural guarantee into a broad protection of liberty, dignity and autonomy.¹⁴⁶ This doctrinal development enabled constitutional review to move beyond the question

¹⁴² *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

¹⁴³ *I.C. Golaknath v. State of Punjab*, AIR 1967 SC 1643; *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

¹⁴⁴ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1; *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625.

¹⁴⁵ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

¹⁴⁶ *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3; *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.

of whether State action had a formal legal basis towards the more substantive question of whether the exercise of State power was constitutionally justified.

The development of proportionality represents the next stage in this evolution. The principle had an earlier presence in Indian administrative law, particularly through *Om Kumar v. Union of India*, but acquired a more structured constitutional character in *Modern Dental College & Research Centre v. State of Madhya Pradesh*.¹⁴⁷ Proportionality introduced a methodology through which courts could examine whether a rights-restricting measure pursued a legitimate objective, was rationally connected to that objective, was necessary in the sense that a less restrictive equally effective alternative was unavailable, and maintained an appropriate balance between the competing interests.¹⁴⁸ Subsequent decisions, including *K.S. Puttaswamy (Retd.) v. Union of India*, *K.S. Puttaswamy (Aadhaar) v. Union of India*, and *Anuradha Bhasin v. Union of India*, demonstrated the application of proportionality to privacy, autonomy, speech and technologically mediated restrictions upon rights.¹⁴⁹

The central question of this study is therefore how the standard of constitutional scrutiny has changed and what proportionality adds to Indian Fundamental Rights jurisprudence. The answer lies in the movement from **formal validity towards substantive constitutional justification**. Judicial review initially asked whether governmental action was authorised and compatible with constitutional provisions. The subsequent development of reasonableness and non-arbitrariness required courts to examine the quality of State action. Proportionality adds a further degree of structure to that inquiry by requiring attention to the relationship between constitutional objectives and the means adopted to achieve them.

Proportionality is consequently significant not simply because it permits courts to invalidate disproportionate measures, but because it can require the State to **justify rights restrictions through a transparent chain of constitutional reasoning**. The State must identify the objective being pursued, demonstrate the connection between the objective and the measure, confront less restrictive alternatives and explain why the resulting interference with the right is constitutionally acceptable.¹⁵⁰ In this respect, proportionality contributes a methodology of justification that can make judicial review more systematic and intelligible.

At the same time, proportionality should not be understood as an automatic or purely mathematical test. The stages of necessity and balancing inevitably involve judicial judgment. Questions concerning the availability of alternatives, the seriousness of a rights infringement and the relative importance of competing interests cannot always be resolved through mechanical legal rules. The doctrine therefore does not eliminate judicial discretion; rather, its principal contribution is to **structure and expose the reasoning through which that discretion is exercised**.

This also explains why proportionality must operate within the limits imposed by separation of powers. Judicial review requires courts to protect constitutional rights against excessive governmental action, but it does not ordinarily authorise courts to substitute their preferred policy for that of constitutionally competent legislative or executive institutions. This institutional limitation becomes particularly important in cases involving national security, public health, economic regulation and technologically complex governance.

¹⁴⁷ *Om Kumar v. Union of India*, (2001) 2 SCC 386; *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.

¹⁴⁸ *Modern Dental*, (2016) 7 SCC 353.

¹⁴⁹ *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1; *K.S. Puttaswamy (Aadhaar) v. Union of India*, (2019) 1 SCC 1; *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

¹⁵⁰ *Modern Dental*, (2016) 7 SCC 353; *Madhyamam Broadcasting Ltd. v. Union of India*, (2023) 5 SCC 421.

The comparative analysis further demonstrates that Indian proportionality has significant structural similarities with European proportionality while developing within India's distinctive constitutional framework. The doctrine has not simply displaced existing principles of reasonableness, arbitrariness or Article 19 review. Instead, it operates alongside and interacts with those doctrines. India's proportionality jurisprudence may therefore be understood as an adapted constitutional methodology shaped by the country's own Fundamental Rights framework.

The contemporary significance of this development is particularly evident in the digital age. Internet restrictions, surveillance, data processing and algorithmic governmental decision-making may create forms of State interference that are more complex and less visible than traditional governmental measures. Proportionality provides a potentially valuable framework for addressing these developments because it requires governmental objectives, means, alternatives and consequences to remain constitutionally accountable. Its future effectiveness will depend upon whether courts can apply the doctrine with sufficient rigour while recognising the institutional limitations of judicial decision-making.

Ultimately, the development examined in this study can be understood as a continuous constitutional progression:

Constitutional supremacy → Judicial review → Basic Structure Doctrine → Expansion of Fundamental Rights → Substantive review → Reasonableness and non-arbitrariness → Proportionality.

This progression does not represent the abandonment of earlier doctrines. Rather, each stage has contributed to the constitutional framework within which the next developed. Constitutional supremacy established the authority of the Constitution; judicial review provided the institutional mechanism for enforcing it; the Basic Structure Doctrine placed substantive limits upon constituent power; expanded Fundamental Rights enlarged the field of constitutional protection; reasonableness and non-arbitrariness deepened the scrutiny of State action; and proportionality introduced a more structured methodology for determining whether rights restrictions can be constitutionally justified.

The principal contribution of proportionality to Indian Fundamental Rights jurisprudence, therefore, lies in transforming constitutional review from a predominantly **validity-oriented inquiry into a more structured inquiry into justification**. It does not provide a universal answer to every constitutional dispute, nor does it remove the difficulties of judicial discretion and institutional competence. Its significance lies instead in requiring governmental power to be justified in relation to the rights it restricts. Properly applied, proportionality can strengthen the culture of constitutional justification while preserving the institutional balance that forms part of India's constitutional design.

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