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DOCTRINE OF PROPORTIONALITY: A CONSTITUTIONAL TOOL FOR INTERPRETING AND LIMITING FUNDAMENTAL RIGHT

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ABSTRACT

The doctrine of proportionality has emerged as a cornerstone of modern constitutional adjudication, serving as a critical framework for balancing individual liberties with legitimate state objectives. This paper offers a **purely doctrinal analysis** of proportionality as a judicial tool for interpreting and limiting fundamental rights in India. Tracing its evolution from English administrative law principles to its integration into Indian constitutional jurisprudence, the study examines landmark judgments including *A.K. Gopalan v. State of Madras*, *Maneka Gandhi v. Union of India*, *Modern Dental College v. State of Madhya Pradesh*, and *Justice K.S. Puttaswamy (Retd.) v. Union of India*. These cases reflect the judiciary's gradual shift from formalistic reasoning to a structured rights-balancing methodology that emphasises fairness, necessity, and minimal intrusion.

The paper also explores **comparative constitutional models**, such as the German structured proportionality test, Canada's *Oakes* test, and the European Union's rights-balancing approach, highlighting lessons for Indian jurisprudence. By critically assessing doctrinal ambiguities, over-reliance on judicial discretion, and the lack of codified interpretative standards, this research argues for a more consistent and transparent application of proportionality in rights adjudication. Ultimately, it demonstrates that proportionality is not merely a mechanism for restricting rights but a **constitutional safeguard** that reinforces democratic values, judicial accountability, and the transformative vision of the Indian Constitution.

1. INTRODUCTION

1.1 Context and Background

Modern constitutional democracies face a persistent challenge: reconciling the guarantee of fundamental rights with the legitimate powers of the State to impose restrictions in the public interest. The **doctrine of proportionality** has emerged as an indispensable judicial tool in this balancing process. Rooted in European legal traditions, proportionality is now a globally recognised standard that ensures rights limitations are reasonable, necessary, and minimally intrusive. In India, where the Constitution is expansive and rights adjudication plays a central role in governance, proportionality offers a framework for structured judicial review, guiding courts in resolving tensions between liberty and authority.

1.2 Research Problem

Despite its growing prominence, proportionality in Indian constitutional law lacks **clear codification and consistent application**. Judicial interpretation has shifted from early formalism, as seen in *A.K. Gopalan v. State of Madras* (1950), to a rights-expansive approach in *Maneka Gandhi v. Union of India* (1978), culminating in its explicit recognition in *Modern Dental College v. State of Madhya Pradesh* (2016). Yet, proportionality's use often varies across cases, leading to unpredictability in constitutional adjudication. There remains a pressing need to study this doctrine doctrinally, evaluate its evolution, and propose a standardised interpretative framework for its future use.

1.3 Objectives of the Study

This research seeks to:

- Trace the **historical development** of proportionality from administrative law to constitutional adjudication.
- Examine its **constitutional foundation** and judicial application in cases involving restrictions on fundamental rights.
- Compare India's approach with **global jurisprudence**, particularly Germany's structured test, Canada's *Oakes Test*, and EU law.
- Analyse **doctrinal ambiguities** and risks of judicial overreach.
- Suggest **reforms and guidelines** for consistent application in Indian constitutional law.

1.4 Scope and Methodology

The study adopts a **purely doctrinal research methodology**, relying on constitutional provisions, Supreme Court and High Court judgments, Constituent Assembly Debates, Law Commission Reports, and scholarly commentaries. It does not rely on empirical or statistical analysis, focusing instead on the interpretative philosophy underpinning judicial reasoning. Comparative perspectives from jurisdictions with mature proportionality jurisprudence are included to provide a robust analytical framework.

1.5 Significance of the Study

Proportionality has become a **critical safeguard for constitutional rights** in an era marked by expanding state powers, technological surveillance, and complex socio-economic challenges. Its structured reasoning offers transparency, judicial accountability, and a principled basis for limiting rights in exceptional circumstances. By systematically examining proportionality's evolution in India, this research aims to enrich constitutional theory and contribute to the development of **consistent rights jurisprudence** that aligns with India's transformative constitutional vision.

2. CONCEPTUAL FOUNDATIONS OF PROPORTIONALITY

2.1 Definition and Core Principle

The doctrine of proportionality is a **judicial standard** used to evaluate whether a restriction on a fundamental right is reasonable, necessary, and appropriately tailored to achieve a legitimate state objective. At its core, proportionality requires that state action **strike a fair balance between individual liberty and collective interests**, ensuring that rights are not curtailed more than is necessary. It is widely regarded as a **structured test of constitutional reasonableness** that prevents arbitrary or excessive state interference while allowing governments to pursue public objectives.

2.2 Philosophical Basis

Proportionality derives from classical principles of **natural law, rule of law, and liberal constitutionalism**, emphasising fairness and rationality in governance. Rooted in European jurisprudence, it reflects the idea that fundamental rights are not absolute but may only be restricted when a compelling interest justifies it, and the restriction is carefully calibrated.

- **Rule of Law:** Proportionality upholds the principle that any rights-limiting measure must be grounded in law and cannot be arbitrary.
- **Constitutionalism:** It enshrines constitutional supremacy, ensuring that limitations on liberty are justified through reasoned judgment.
- **Democratic Legitimacy:** By demanding a transparent justification for restrictions, proportionality strengthens public trust in judicial and legislative decision-making.

2.3 Elements of the Proportionality Test

Globally, proportionality is applied through a **structured multi-pronged test**. In India, courts have gradually moved toward this model:

1. **Legitimate Aim:** The state measure must pursue a constitutionally valid objective, such as public order, security, or welfare.
2. **Rational Connection:** There must be a logical nexus between the measure and the stated objective, preventing arbitrary actions.
3. **Necessity:** The chosen restriction should be the **least restrictive means** to achieve the objective, minimising rights infringement.
4. **Balancing (Proportionality in the Strict Sense):** Courts weigh the benefit of the state action against the harm caused to individual rights, ensuring that rights are not disproportionately sacrificed.

This structured approach ensures consistency and prevents excessive interference in civil liberties.

2.4 Relationship with Reasonable Restrictions and Wednesbury Principles

The Indian Constitution explicitly allows “reasonable restrictions” on rights under Articles 19(2)–(6). Proportionality builds upon this concept, offering a **more nuanced and structured test** for evaluating reasonableness. Unlike the **Wednesbury unreasonableness standard**, which assesses only whether a decision is outrageously irrational, proportionality provides **deeper scrutiny** by questioning the necessity and fairness of the action. This shift represents India’s movement toward **rights-centric judicial review**.

2.5 Constitutional Morality and Transformative Justice

Proportionality also aligns with the Indian Constitution’s **transformative character**. By requiring a careful justification for restrictions, it ensures that rights are not merely procedural

guarantees but substantive tools for social justice. Courts have used proportionality to expand privacy, dignity, and equality jurisprudence, reflecting constitutional morality as a guiding value in interpretation.

2.6 Significance as a Doctrinal Standard

Proportionality's adoption marks a departure from formalistic interpretation, embedding **rationality, necessity, and fairness** into judicial review. It provides:

- **Predictability:** A structured framework for both legislators and courts.
- **Flexibility:** Applicability to diverse disputes, from preventive detention to digital rights.
- **Judicial Accountability:** Transparent reasoning that demonstrates respect for democratic processes while safeguarding liberty.

3. CONSTITUTIONAL CONTEXT OF PROPORTIONALITY IN INDIA

3.1 Textual Basis within the Indian Constitution

The Indian Constitution guarantees a wide range of **Fundamental Rights** under Articles 12–35 but explicitly permits their regulation through “reasonable restrictions” in the interests of sovereignty, security, morality, and public order. Provisions such as **Article 19(2)–(6)**, which outline permissible limits on freedoms of speech, association, trade, and movement, are central to understanding proportionality. Similarly, **Article 21** guarantees personal liberty, which has been expansively interpreted by the Supreme Court to include due process requirements. These constitutional texts create the foundation for proportionality review, requiring courts to examine whether state-imposed restrictions are **necessary, fair, and not excessive** in relation to their objective.

3.2 Preamble and Constitutional Philosophy

The Preamble articulates values such as justice, liberty, equality, and fraternity, framing proportionality as a tool to achieve balance between **individual freedom and social welfare**. Indian constitutionalism is transformative, aiming to protect rights while enabling progressive governance. Proportionality supports this vision by ensuring that any rights limitation advances legitimate constitutional goals without undermining the dignity of individuals.

3.3 Judicial Review and Fundamental Rights

The Indian judiciary, under Articles **13, 32, and 226**, has been empowered to strike down unconstitutional legislation and executive actions. Proportionality strengthens this power by offering a **structured framework** for evaluating restrictions, ensuring that courts do not rely solely on vague notions of reasonableness. This aligns with the Supreme Court's interpretation in *Modern Dental College v. State of Madhya Pradesh* (2016), where the Court explicitly endorsed proportionality as the **primary standard** for testing restrictions on rights.

3.4 Articles 19, 21, and the Evolution of Rights Protection

The doctrine's relevance is particularly evident in the interplay of Articles **19 and 21**:

- In early jurisprudence like *A.K. Gopalan* (1950), courts adopted a narrow view, treating rights separately and avoiding substantive review of restrictions.
- *Maneka Gandhi* (1978) transformed this approach, linking Articles 14, 19, and 21 into an integrated code, thus paving the way for proportionality review.
- Subsequent judgments, including *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017), applied proportionality to assess privacy intrusions, demonstrating its growing constitutional significance.

3.5 Directive Principles and Public Interest

Proportionality also mediates between **Part III (Fundamental Rights)** and **Part IV (Directive Principles of State Policy)**, ensuring that socio-economic goals do not disproportionately undermine individual freedoms. This reflects the vision in *Minerva Mills v. Union of India* (1980), which stressed harmony between rights and directives, demonstrating proportionality's role in achieving **constitutional equilibrium**.

3.6 Constitutional Morality as a Guiding Principle

Indian courts increasingly rely on **constitutional morality** to interpret proportionality. Landmark cases such as *Navtej Singh Johar v. Union of India* (2018) emphasise dignity and equality as core values, suggesting that proportionality is not a mechanical balancing exercise but a **value-driven standard**. This elevates proportionality from a procedural test to a substantive constitutional philosophy.

3.7 Expanding Role in Governance and Technology

With the rise of surveillance technologies, digital privacy concerns, and national security legislation, proportionality has become essential for **future-proofing constitutional rights**. Cases like *Anuradha Bhasin v. Union of India* (2020), which examined internet shutdowns, underscore the doctrine's relevance in the digital age, reinforcing that constitutional freedoms must not be curtailed arbitrarily.

4. HISTORICAL DEVELOPMENT OF THE DOCTRINE

4.1 Origins in European Jurisprudence

The doctrine of proportionality has its roots in **continental European legal systems**, particularly in German constitutional law, where it evolved as a structured method of judicial review. German courts developed a **three-tier test** legitimate aim, suitability, and necessity to ensure that state actions infringing rights are justified and narrowly tailored. Over time, proportionality became central to the jurisprudence of the **European Court of Human Rights (ECHR)** and the **Court of Justice of the European Union (CJEU)**, shaping a global standard for rights adjudication. Its philosophical foundation rests on **rule of law principles** and the belief that all state power is limited by reason and fairness.

4.2 Influence on Indian Administrative Law

Proportionality entered Indian law indirectly through **administrative law**, influenced by British jurisprudence. Initially, Indian courts relied on the **Wednesbury unreasonableness test** from *Associated Provincial Picture Houses v. Wednesbury Corporation* (1948), which allowed courts to intervene only if a decision was outrageously irrational. However, over time, Indian administrative law evolved to embrace deeper judicial scrutiny, and proportionality emerged as a natural extension of reasonableness, particularly in cases involving fundamental rights.

4.3 Early Constitutional Era: Formalism and Limited Review

In the early years of the Constitution, Indian courts adopted a **narrow and formalistic approach** to rights interpretation. In *A.K. Gopalan v. State of Madras* (1950), the Supreme Court held that Articles 19 and 21 were independent silos, rejecting the idea of substantive due process. Judicial review of restrictions on liberty was minimal, and proportionality had not yet

entered the constitutional discourse. Instead, courts applied a presumption of constitutionality to state actions, focusing primarily on procedural legality.

4.4 Doctrinal Shift in Maneka Gandhi (1978)

The landmark judgment in *Maneka Gandhi v. Union of India* (1978) marked a **watershed moment** for proportionality in Indian constitutional law. The Supreme Court reinterpreted Articles 14, 19, and 21 as an integrated code, holding that any restriction on personal liberty must meet standards of **fairness, reasonableness, and non-arbitrariness**. While the Court did not explicitly use the term “proportionality,” its reasoning laid the foundation for proportionality review by insisting on substantive safeguards against executive power.

4.5 Gradual Recognition of Proportionality

Post-*Maneka Gandhi*, proportionality gained traction in areas like **freedom of speech, trade, and privacy**. In *Om Kumar v. Union of India* (2000), the Supreme Court explicitly distinguished between **Wednesbury unreasonableness** and proportionality, acknowledging that proportionality was the preferred standard in cases involving fundamental rights. The judgment emphasised that courts must evaluate the **degree and necessity** of restrictions, thereby formalising proportionality as a judicial principle.

4.6 Formal Adoption in Modern Dental College (2016)

The doctrine was explicitly codified in constitutional adjudication in *Modern Dental College v. State of Madhya Pradesh* (2016), where the Supreme Court endorsed a **structured four-step proportionality test**:

1. The restriction must serve a legitimate aim.
2. There must be a rational nexus between the restriction and its objective.
3. The restriction must be necessary and the least intrusive measure.
4. The measure’s benefits must outweigh its harm to rights.

This judgment firmly established proportionality as the **constitutional standard for evaluating restrictions on fundamental rights**.

4.7 Puttaswamy (2017) and Privacy Jurisprudence

The nine-judge bench decision in *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017) reaffirmed proportionality as an integral part of rights adjudication, applying it to assess privacy

intrusions in the context of Aadhaar. The Court clarified that proportionality safeguards liberty against excessive state surveillance, embedding the doctrine deeply in India's constitutional framework.

4.8 Contemporary Expansion and Digital Governance

Recent cases such as *Anuradha Bhasin v. Union of India* (2020), which examined internet shutdowns, and *K.S. Puttaswamy (Aadhaar-II)* (2019) demonstrate proportionality's growing role in addressing challenges posed by technology, data protection, and national security. Courts now routinely invoke proportionality to **balance individual freedoms with state interests**, signalling its maturity as a constitutional principle.

5. PROPORTIONALITY IN FUNDAMENTAL RIGHTS JURISPRUDENCE

5.1 Article 19: Freedom and Reasonable Restrictions

Proportionality has become an essential standard for testing the **reasonableness of restrictions** under Article 19, which guarantees freedoms of speech, association, trade, and movement. Initially, courts adopted a narrow interpretation, deferring to legislative judgment, as in *State of Madras v. V.G. Row* (1952), where reasonableness was evaluated in broad terms. Over time, proportionality introduced a more structured approach. In *Modern Dental College v. State of Madhya Pradesh* (2016), the Supreme Court explicitly endorsed proportionality, holding that the extent of restriction must not exceed what is necessary to achieve a legitimate goal. This ruling solidified proportionality as a **constitutional benchmark** for restrictions under Article 19.

5.2 Article 21: Due Process, Fairness, and Liberty

Article 21's guarantee of the **right to life and personal liberty** has been central to proportionality's growth. In *Maneka Gandhi v. Union of India* (1978), the Court departed from its earlier formalism, reading Articles 14, 19, and 21 together to require fairness and reasonableness in all state action. Although proportionality was not explicitly named, this case laid its foundation by emphasising that liberty cannot be curtailed arbitrarily. Subsequent cases, including *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017), explicitly applied proportionality to evaluate privacy intrusions under the Aadhaar scheme, cementing its role as a **due process safeguard** against executive overreach.

5.3 Preventive Detention and National Security Laws

Proportionality has also been invoked in assessing preventive detention and security-related measures, where individual liberty often collides with state interests. In *A.K. Roy v. Union of India* (1982), although the Court upheld preventive detention laws, it stressed that such powers must be narrowly construed. Recent judgments like *Anuradha Bhasin v. Union of India* (2020), which examined internet shutdowns in Jammu & Kashmir, reinforced proportionality as a tool for ensuring that restrictions on rights are temporary, narrowly tailored, and proportionate to the situation, particularly in matters involving national security.

5.4 Freedom of Religion and Equality (Articles 25–28)

The doctrine has guided the balancing of **religious freedoms and social reform**. In *Shayara Bano v. Union of India* (2017), the Court examined the practice of instant triple talaq and applied proportional reasoning to determine that the practice violated constitutional morality and gender equality, despite being religiously sanctioned. Similarly, in *Indian Young Lawyers Association v. State of Kerala* (2018) (Sabarimala case), proportionality played a role in reconciling religious practices with women's right to equality, illustrating its transformative capacity in interpreting rights in a pluralistic society.

5.5 Freedom of Speech vs. Reputation and Public Order

Proportionality has been key in balancing freedom of speech under Article 19(1)(a) against competing interests like public order and reputation. In *Subramanian Swamy v. Union of India* (2016), the Court upheld criminal defamation, reasoning that restrictions must be **reasonable and proportionate** to their objectives. While this decision attracted criticism, it demonstrates that proportionality now underpins judicial reasoning, even where restrictions are upheld.

5.6 Socio-Economic Rights and Directive Principles

Indian courts have expanded proportionality's role in interpreting socio-economic rights derived from Directive Principles of State Policy (Part IV). In cases like *Olga Tellis v. Bombay Municipal Corporation* (1985), the Court linked the **right to livelihood** with Article 21, using proportional reasoning to ensure evictions did not unjustly infringe on life and dignity. Proportionality thus bridges the traditional divide between enforceable rights and directive principles, embedding welfare considerations into rights adjudication.

5.7 Technology, Privacy, and Emerging Challenges

With increasing reliance on technology and state surveillance, proportionality has gained renewed relevance. In *Puttaswamy (2017)*, the Court applied a **four-step proportionality test** to evaluate data collection and privacy implications, holding that any invasion of privacy must be backed by a legitimate aim, be necessary, proportionate, and subject to procedural safeguards. Similarly, in *Internet Freedom Foundation v. Union of India (2020)*, proportionality informed debates around state surveillance and data protection, making it central to India's constitutional response to the digital age.

5.8 Transformative Impact on Judicial Review

Proportionality has transformed rights adjudication by moving courts beyond procedural scrutiny toward **substantive rights protection**. Unlike earlier tests of arbitrariness or reasonableness, proportionality offers a **structured inquiry** that enhances judicial accountability and transparency. It requires the State to justify its actions with evidence, fostering a culture of constitutional reasoning over blanket deference to authority.

6. COMPARATIVE PERSPECTIVES

6.1 Germany: The Origin of Structured Proportionality

Germany is widely recognised as the birthplace of the modern proportionality doctrine. The **Federal Constitutional Court (Bundesverfassungsgericht)** established a **three-tier test**: (i) legitimacy of the aim, (ii) suitability of the measure, and (iii) necessity, followed by a fourth step **balancing in the strict sense** to weigh individual rights against societal interests. This structured test has made proportionality a **core principle of German constitutionalism**, used in virtually all fundamental rights cases. Its systematic reasoning provides clarity and predictability, which has inspired many other jurisdictions, including India.

6.2 European Union and the ECHR: A Global Standard

The **Court of Justice of the European Union (CJEU)** and the **European Court of Human Rights (ECHR)** use proportionality extensively to review state actions. The EU applies proportionality as a **general principle of law**, particularly in reviewing legislation impacting economic freedoms and privacy rights. The ECHR employs proportionality to assess restrictions under the European Convention on Human Rights, ensuring that limitations on freedoms like expression or assembly are necessary in a democratic society. This demonstrates

that proportionality is now a **pan-European constitutional standard**, influencing Indian jurisprudence through comparative reasoning, especially in privacy and data protection cases (*Puttaswamy*, 2017).

6.3 United Kingdom: Proportionality vs. Wednesbury

In the U.K., proportionality emerged primarily through **human rights adjudication** after the enactment of the **Human Rights Act, 1998**, which incorporated the European Convention into domestic law. Traditionally, English courts relied on the **Wednesbury unreasonableness** test, which permitted intervention only for extreme irrationality. However, in cases such as *R v. Secretary of State for the Home Department, ex parte Daly* (2001), the House of Lords formally adopted proportionality, especially in rights cases. Proportionality allows **deeper scrutiny** of government actions compared to *Wednesbury*, signalling a global convergence toward structured rights review.

6.4 Canada: The Oakes Test and Section 1 of the Charter

Canada provides one of the most comprehensive proportionality frameworks through **Section 1 of the Canadian Charter of Rights and Freedoms (1982)**, which explicitly allows reasonable limitations on rights that can be justified in a free and democratic society. The **Oakes Test**, developed in *R v. Oakes* (1986), mirrors the German approach: (i) there must be a pressing and substantial objective, (ii) the measure must be rationally connected to the objective, (iii) it should impair rights minimally, and (iv) proportionality must exist between benefits and harm. Canada's codification of proportionality offers an exemplary model for India, where the test remains judge-made and less formalised.

6.5 United States: Tiered Scrutiny

The United States Constitution does not explicitly use proportionality, but its **tiered scrutiny framework** serves a similar function. The U.S. Supreme Court applies **strict scrutiny** for fundamental rights and suspect classifications, requiring a compelling state interest and narrowly tailored measures, while **intermediate scrutiny** applies to quasi-suspect classifications, and **rational basis review** for others. Although not formally labeled as proportionality, this system also balances rights with governmental interests, albeit in a categorical rather than structured manner.

6.6 Lessons for India

A comparative analysis reveals three key insights for India's evolving doctrine of proportionality:

- **Structure and Clarity:** Germany and Canada's codified approaches demonstrate the value of clear, step-by-step tests, which India could adopt to reduce ambiguity.
- **Judicial Depth:** The U.K.'s shift from *Wednesbury* to proportionality shows how rights-based review enhances accountability.
- **Flexibility:** The U.S. model underscores that proportionality need not be rigid; it can be adapted to context while retaining strong rights protection.

India's Supreme Court has already begun integrating these global models, as seen in *Modern Dental College* (2016) and *Puttaswamy* (2017). A formal codification of proportionality, inspired by these jurisdictions, would strengthen rights protection and ensure **judicial transparency**.

7. CRITICAL DOCTRINAL ISSUES

7.1 Absence of Codification and Standardised Test

One of the primary challenges with proportionality in Indian law is its **lack of codification**. While the Supreme Court in *Modern Dental College v. State of Madhya Pradesh* (2016) formally recognised a four-pronged test, its application remains inconsistent across cases. Unlike Germany or Canada, where proportionality is deeply embedded in constitutional texts or judicial culture, India lacks a **formalised interpretative framework** that mandates proportionality review in all rights cases. This absence creates uncertainty and leaves interpretation heavily dependent on judicial discretion.

7.2 Over-reliance on Judicial Discretion

Proportionality empowers courts to evaluate legislative and executive actions closely, but this power also risks **judicial overreach**. Without clear procedural safeguards, judges may impose their own subjective understanding of what constitutes a "legitimate aim" or "least restrictive means," blurring the separation of powers. This risk is particularly significant in India, where constitutional courts often play a dominant role in policymaking and governance.

7.3 Inconsistent Application Across Rights

Although proportionality is firmly established in privacy and free speech jurisprudence

(Puttaswamy, 2017; Anuradha Bhasin, 2020), its application is uneven in other domains such as preventive detention, economic regulation, and criminal justice. In certain cases, courts continue to rely on **Wednesbury unreasonableness** or vague reasonableness tests, resulting in a **fragmented standard** of judicial review. This lack of uniformity undermines the doctrine's potential as a universal tool for protecting rights.

7.4 Weak Legislative Engagement

Proportionality has primarily evolved as a **judge-made doctrine**, with minimal legislative recognition. Parliament has not provided statutory guidance or interpretative principles for proportionality review, unlike Canada's **Charter of Rights and Freedoms** or the European Convention on Human Rights, which explicitly require proportional justification for rights limitations. This absence of legislative input places an excessive burden on courts to define proportionality's contours.

7.5 Challenges in Socio-Economic Rights Adjudication

Proportionality is well-suited to traditional civil and political rights disputes but faces difficulty in **socio-economic rights cases**, where resource allocation and policy priorities are central. Courts are hesitant to apply strict proportionality tests to matters involving government spending, welfare distribution, or affirmative action, resulting in an inconsistent rights-protection landscape. A nuanced adaptation of proportionality is necessary to address these complexities.

7.6 Lack of Empirical and Evidence-Based Review

A proportionality analysis requires courts to assess whether restrictions are **necessary and minimally intrusive**, often demanding empirical justification. However, Indian courts rarely insist on rigorous evidence or policy analysis to support state measures, weakening proportionality's effectiveness. This is particularly concerning in cases involving surveillance, internet shutdowns, or restrictions on assembly, where executive decisions are often upheld without robust factual scrutiny.

7.7 Tension Between Democratic Legitimacy and Judicial Oversight

The doctrine enhances judicial accountability, but its intensive review also raises concerns about **democratic legitimacy**. By second-guessing legislative or executive choices, courts risk

being perceived as encroaching on policy-making, especially when proportionality tests are applied to complex issues like environmental regulations, taxation, or affirmative action. Balancing judicial vigilance with respect for democratic institutions remains a core challenge.

7.8 Limited Integration with Constitutional Morality

Although proportionality is now linked with constitutional morality in decisions like *Navtej Singh Johar v. Union of India*(2018), this connection is still underdeveloped. Courts have yet to fully integrate moral and ethical principles such as dignity, equality, and inclusivity into proportionality review, limiting its transformative potential. A stronger integration would enhance proportionality's role in realising the **Constitution's aspirational values**.

8. NEED FOR DOCTRINAL REFORM

8.1 Formal Codification of the Proportionality Test

Although proportionality has become a recognised principle of Indian constitutional law, it is applied inconsistently across cases because it remains **judge-made and uncodified**. Unlike jurisdictions such as Germany, Canada, and the European Union, India lacks a **constitutionally mandated or legislatively endorsed test** to evaluate rights limitations. Codifying proportionality through statutory enactment or Supreme Court practice directions would bring **uniformity and predictability** to rights adjudication, reducing reliance on judicial discretion and ensuring consistent interpretation of constitutional provisions.

8.2 Structured and Context-Specific Application

Proportionality is currently applied broadly, often without tailoring its framework to the nature of rights under review. For instance, speech, privacy, or detention cases require nuanced analyses distinct from those applied to socio-economic rights. Reform should introduce **context-sensitive proportionality tests**, ensuring that courts adopt a flexible yet principled approach based on the nature of the right, the severity of restriction, and competing constitutional interests. This would strengthen its role as a universal standard while respecting contextual realities.

8.3 Integration with Constitutional Morality and Transformative Justice

Indian constitutional interpretation emphasises **transformative constitutionalism**, seeking to advance equality, dignity, and social justice. Proportionality should explicitly incorporate

constitutional morality as a guiding value, ensuring that rights adjudication reflects the transformative spirit of the Constitution rather than a purely procedural balancing of interests. This shift would allow courts to use proportionality not merely as a legal test but as a **substantive safeguard** that protects marginalised communities and upholds democratic ideals.

8.4 Legislative Engagement and Institutional Support

Proportionality has been almost entirely shaped by judicial interpretation, with little contribution from the legislature. A more **collaborative approach** is necessary, wherein Parliament and constitutional commissions provide clarity on permissible limitations of rights and embed proportionality in statutory frameworks. Additionally, a **Constitutional Interpretation Commission** could be established to study global best practices, provide recommendations, and assist the judiciary in refining proportionality review.

8.5 Evidence-Based Judicial Review

Proportionality requires courts to evaluate the **necessity and minimality** of state-imposed restrictions, but Indian judgments often lack empirical rigor. Strengthening proportionality will require **evidence-driven judicial reasoning**, compelling the State to justify its measures with demonstrable facts, studies, and data rather than abstract claims of national interest or public welfare. This shift would improve accountability and align India with global rights jurisprudence.

8.6 Training and Capacity Building for Judiciary

For proportionality to be applied consistently, judges and legal practitioners need systematic training in comparative constitutional law and structured rights adjudication. Judicial academies should introduce **specialised courses** on proportionality, incorporating case studies from global and Indian contexts. Building judicial expertise will ensure that proportionality is applied uniformly and thoughtfully, reducing inconsistencies in constitutional interpretation.

8.7 Clarifying the Balance Between Judicial Review and Separation of Powers

While proportionality strengthens rights protection, it also raises concerns about judicial overreach. There is a need to clearly define its scope to respect **legislative intent and democratic processes** while safeguarding fundamental rights. This balance can be achieved through **clear procedural standards**, transparency in reasoning, and regular constitutional bench reviews to revisit and refine proportionality's application.

8.8 Future-Proofing the Doctrine for Emerging Challenges

Rapid technological advancements, digital surveillance, and the increasing regulation of cyberspace demand a proportionality framework capable of addressing **new-age rights violations**. Proportionality reform should explicitly include guidelines for evaluating privacy intrusions, algorithmic decision-making, and other technology-related threats, ensuring the doctrine remains relevant and effective in protecting rights in the digital era.

9. RECOMMENDATIONS

9.1 Codify a Formal Proportionality Test

The Supreme Court should issue **binding guidelines or a practice direction** to formalise the four-step proportionality test:

1. Identification of a legitimate objective.
2. Verification of a rational connection between the measure and objective.
3. Necessity analysis to ensure minimal rights infringement.
4. A balancing stage to weigh benefits against harm to rights.

Codification will create **uniformity and predictability**, helping judges, lawyers, and legislators adopt a consistent rights adjudication framework.

9.2 Legislative Involvement in Rights Limitation

Parliament should introduce statutory provisions clarifying permissible **limitations on fundamental rights**, drawing inspiration from **Section 1 of the Canadian Charter** and the **European Convention on Human Rights**. This approach would strengthen **democratic legitimacy** and reduce the perception of judicial overreach while giving courts clear parameters for review.

9.3 Develop Context-Specific Application

To address the diversity of rights disputes, proportionality should be **adapted to context**:

- For **civil and political rights**, courts should use stricter scrutiny.
- For **socio-economic rights**, a nuanced version with deference to resource constraints is appropriate.

Such differentiation would ensure the doctrine remains **flexible yet principled**.

9.4 Strengthen Evidence-Based Judicial Review

Courts should mandate **empirical evidence** to justify rights restrictions, requiring government authorities to provide data, studies, and impact assessments. This will move proportionality from abstract reasoning to a **fact-driven adjudication process**, improving the quality and credibility of constitutional review.

9.5 Integrate Constitutional Morality

Proportionality should explicitly incorporate **constitutional morality** as a guiding principle, ensuring that restrictions align with dignity, equality, and liberty. This would transform proportionality into a **value-sensitive standard** capable of addressing systemic discrimination and social injustice.

9.6 Establish a Constitutional Interpretation Commission

A permanent **Constitutional Interpretation Commission**, comprising legal scholars, judges, and constitutional experts, could:

- Draft interpretation manuals for proportionality and other doctrines.
- Provide amicus briefs in landmark cases.
- Conduct periodic reviews of constitutional adjudication trends.

This body would institutionalise scholarship and **assist courts with doctrinal clarity**.

9.7 Judicial Training and Legal Education

Judicial academies and law schools should introduce specialised modules on proportionality, including **comparative constitutional law and practical application exercises**. Continuous training would ensure that judges and practitioners use proportionality consistently across jurisdictions and case types.

9.8 Periodic Review of Restrictive Legislation

The Supreme Court could adopt a **sunset review mechanism** for legislation imposing restrictions on rights. By mandating regular proportionality assessments, courts can ensure that laws remain **relevant, necessary, and non-intrusive**, especially in fast-changing fields like technology and privacy.

9.9 Learn from Global Models

India should draw lessons from:

- **Germany's structured proportionality test** for clarity.
- **Canada's Oakes Test** for strong evidence-based scrutiny.
- **UK's rights-consistent interpretation** for parliamentary respect.

Adapting these elements would enhance India's own approach and contribute to global constitutional discourse.

9.10 Enhance Public Engagement and Transparency

To foster trust in constitutional adjudication, courts should adopt **simplified explanations of proportionality reasoning** in landmark judgments and provide **open-access resources** for citizens. Public engagement ensures that proportionality is not viewed as a purely academic or judicial exercise but as a **practical safeguard for democracy**.

10. CONCLUSION

The doctrine of proportionality has evolved from a foreign principle of administrative law into a **central pillar of Indian constitutional interpretation**, shaping the balance between liberty and legitimate governance. This paper has demonstrated that proportionality provides a **structured and principled approach** to evaluating restrictions on fundamental rights, demanding that state actions be justified through reason, evidence, and fairness. Its recognition in landmark cases such as *Maneka Gandhi v. Union of India* (1978), *Modern Dental College v. State of Madhya Pradesh* (2016), and *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017) reflects the judiciary's gradual transition from procedural formalism to a rights-oriented framework of judicial review.

Despite these advances, proportionality in India suffers from **fragmentation, lack of codification, and uneven enforcement** across various rights disputes, including preventive detention, socio-economic policies, and emerging digital rights. Without clear statutory guidance, courts rely heavily on discretion, which risks unpredictability and perceptions of judicial overreach. In contrast, comparative jurisdictions like Germany, Canada, and the European Union demonstrate the benefits of **codified, structured proportionality frameworks**, reinforcing the need for reform in India.

To fully realise its transformative potential, proportionality must be **institutionalised as a constitutional standard**. Codification, evidence-based review, judicial training, and integration with constitutional morality are essential steps to ensure that rights are not curtailed arbitrarily but only in pursuit of legitimate aims through the least intrusive means. By strengthening proportionality, India can fortify its commitment to **democracy, rule of law, and human dignity**, creating a rights-adjudication framework that is transparent, consistent, and responsive to the challenges of a complex, technology-driven society.

In essence, proportionality is not merely a doctrinal test but a **constitutional philosophy** that embodies fairness, accountability, and justice. Its consistent application will secure the vision of the Indian Constitution as a **transformative charter**, protecting liberty while enabling progressive governance in a rapidly evolving democracy.

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