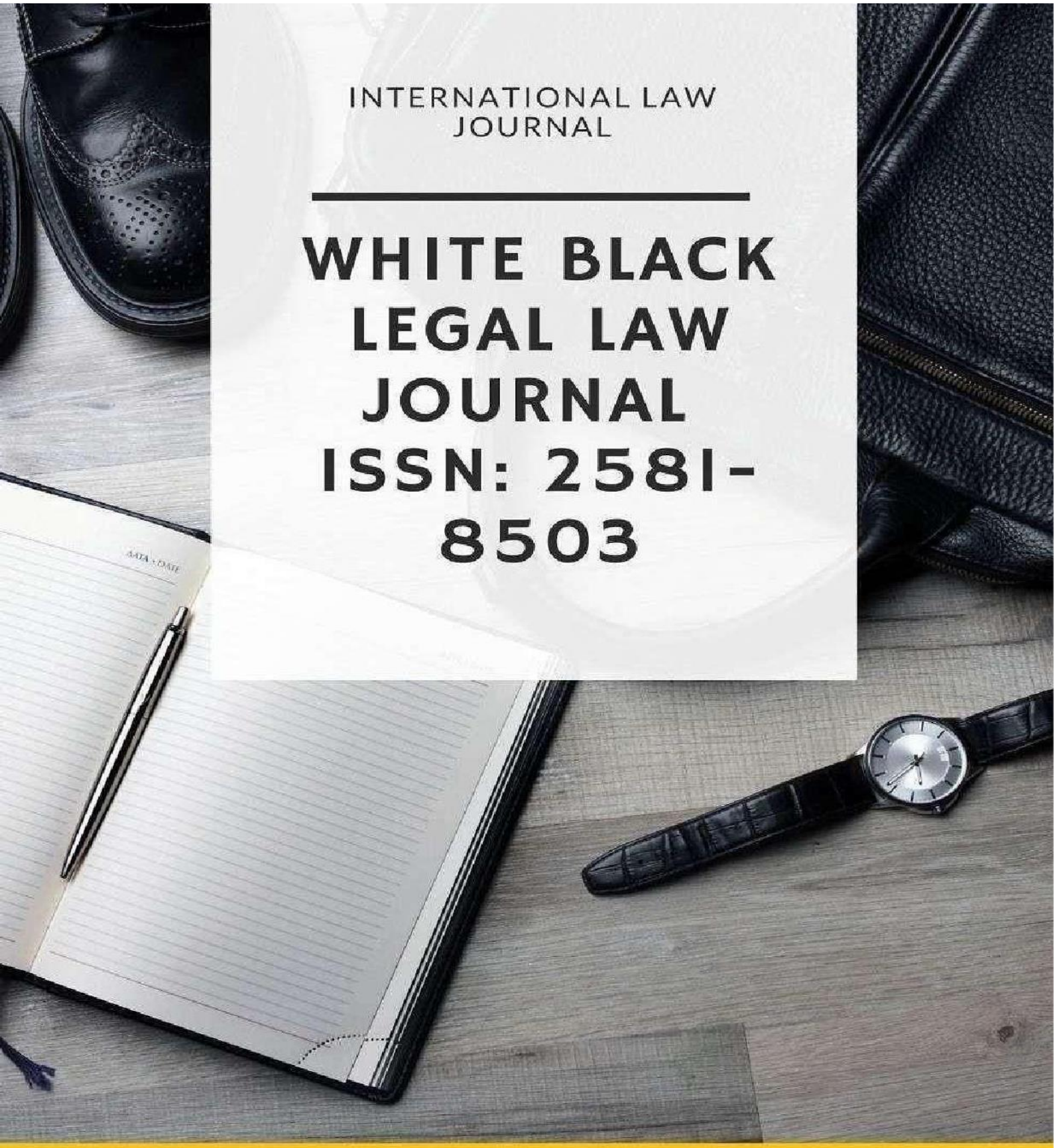


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REASONED ADMINISTRATIVE DECISIONS IN INDIA- THE EVOLUTION OF THE DUTY TO GIVE REASONS THROUGH JUDICIAL REVIEW

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Abstract

This paper charts the evolution of the duty to give reasons for administrative decisions in India. Neither the Constitution nor any general statute explicitly imposes this obligation but it emerged through judicial pronouncements from the Supreme Court beginning in Harinagar Sugar Mills (1961) and concluding in Anuradha Bhasin (2020). It is demonstrated that the duty evolved through three phases. Initially, it was justified as a supervisory tool for appellate and revisional orders then incorporated within article 14 and finally declared as a general principle of administration. In assessing the strictness of this obligation in four contexts dismissal from service, preventive detention, licence revocation and economic or fiscal decisions four variables consistently resurfaced the nature of the function, the value of the interest affected, the availability of review and possible competing public interests. These variables were found to operate in a manner akin to proportionality though implicitly and with varying degrees of consistency which may explain the divergence between the various cases, including the shift from Madhya Pradesh Industries to Bhagat Raja. It was further found that fiscal decisions are not subject to differential scrutiny per se, since adjudicative fiscal decisions involve a strict scrutiny standard whereas fiscal policy or commercial decisions are guided by leniency principles. Finally, a four-part framework for evaluating the duty's strictness is proposed.

Keywords: duty to give reasons, speaking orders, judicial review, administrative law, proportionality, natural justice, India.

1. Introduction

1.1 Background

When an administrative decision adverse to an individual is taken, the first question that arises is why. A government servant faces dismissal, a trader has his licence revoked and a person is placed in preventive detention upon the satisfaction of a district magistrate. In all these situations the affected individual receives an order often containing little or no explanation. The reasons therefor enable the individual to assess the order's propriety, to provide a basis for judicial review and to facilitate internal administrative checks and balances[1]. The initial jurisprudence on India's administrative law doctrine was sparse as the Constitution does not impose a general obligation to give reasons for administrative decisions merely requiring them in preventive detention and for certain penalties against government servants coupled with a right to inquiry.[2] The first general statute was the Right to Information Act 2005 which imposes a duty to give reasons for administrative and quasi-judicial decisions on all public authorities in matters concerning any affected person.[3] Thus, the obligation to give reasons was judicially created and gradually expanded through decades of jurisprudence beginning with Harinagar Sugar Mills[4] and concluding with Anuradha Bhasin . The evolution of this doctrine reflects in part Mureinik's culture of justification, a normative philosophy uniting diverse legal traditions through the assumption of the legitimacy of public power only when subjected to reasons-giving. [5]That said, the questions of when, how extensively and on whose say-so this obligation should be imposed as well as the remedies available for its violation remained unanswered.

1.2 Problem Statement

In an ideal environment, an official would be able to rely on well-established criteria determining when reasons for a decision are required, how much detail they must contain and when and why this standard may be relaxed. The Indian law does not permit this degree of predictability as the obligation to give reasons is inconsistently applied depending on the context with no clear guidance as to why such differential treatment is warranted. A person challenging a government order is justifiably uncertain as to whether a brief or silent order will

[1] Frederick Schauer, 'Giving Reasons' (1995) 47 Stanford Law Review 633; Martin Shapiro, 'The Giving Reasons Requirement' [1992] University of Chicago Legal Forum 179.
[2] Constitution of India, arts 22(5) and 311(2).
[3] Right to Information Act 2005, s 4(1)(d).
[4] Harinagar Sugar Mills Ltd v Shyam Sundar Jhunjhunwala AIR 1961 SC 1669, [1962] 2 SCR 339, 356 to 57.
[5] Etienne Mureinik, 'A Bridge to Where? Introducing the Interim Bill of Rights' (1994) 10 South African Journal on Human Rights 31; David Dyzenhaus, 'Law as Justification: Etienne Mureinik's Conception of Legal Culture' (1998) 14 South African Journal on Human Rights 11.

be overturned and what the appropriate grounds for such a decision would be. Similarly, an official seeking to issue a reasoned order is unsure as to whether the degree of detail provided is sufficient in the given context.

1.3 Existing Work and the Gap

Indian textbooks on administrative law generally follow the same structure,organising the case law according to different field such as service law or licensing law. While informative, this approach primarily serves pedagogical purposes, providing little insight into why or how such doctrines were created. Comparative studies by contrast examine whether and to what extent the common law holds a general obligation to give reasons discussing the emergence of this doctrine in England and its formal rejection in Australia[6]. In other words, they focus on determining whether a uniform standard is or is not desirable rather than examining the development of the law in any given jurisdiction. Meanwhile, the literature on proportionality, which examines the balancing of interests in administrative decisions, particularly in the wake of Modern Dental College and Puttaswamy rarely comments directly on the reasons-giving obligations[7]. What the existing scholarship fails to provide is an analysis of the evolution of the duty to give reasons and an assessment of the consistency or otherwise of its application.

1.4 Objectives, Research Questions and Scope

This paper aims to achieve four objectives. First, it undertakes to demonstrate the evolution of the duty to give reasons through successive phases of judicial review. Second, it analyses the degree to which this obligation is applied across four contexts - dismissals from government service, preventive detention, licence revocation and economic or fiscal matters. Third, the paper attempts to demonstrate that in practice the obligation conforms to the principle of proportionality. Fourth, it evaluates the implications of this inconsistency for administrative law and proposes a framework according to which the duty to give reasons may be evaluated. The paper therefore addresses the following research questions- how did the obligation to give reasons evolve? How and to what extent is this obligation applied across different contexts? To what extent is this application consistent with the principle of proportionality? What are the

[6] R v Secretary of State for the Home Department, ex p Doody [1994] 1 AC 531; Stefan v General Medical Council [1999] 1 WLR 1293; Public Service Board of New South Wales v Osmond (1986) 159 CLR 656; Paul Craig, Administrative Law (9th edn, Sweet & Maxwell 2021); Mark Elliott, 'Has the Common Law Duty to Give Reasons Come of Age Yet?' [2011] Public Law 56.

[7] Modern Dental College and Research Centre v State of Madhya Pradesh (2016) 7 SCC 353; KS Puttaswamy v Union of India (2017) 10 SCC 1.

implications of this inconsistency?

The paper is doctrinal in nature relying primarily on published reports of Supreme Court judgments, with additional reference to statutes. It does not attempt a comprehensive survey of High Court or specialised tribunal decisions, though comparison with foreign law is occasionally made to provide context. It makes three contributions to the existing literature. First, it attempts to describe and systematise a doctrine that has previously been discussed largely descriptively. Second, it examines the implications of the case law for the principle of proportionality and the normative basis for administrative law. Third, it highlights the practical ramifications of this case law for officials and lawyers.

1.5 Structure

Part 2 introduces the key concepts and methodology. Part 3 details the evolution of the duty to give reasons, which occurred gradually through successive cases. Part 4 analyses the consistency of this obligation across the four contexts mentioned above. Part 5 examines whether the application of this principle conforms to the idea of proportionality. Part 6 proposes a framework for evaluating reasons-giving obligations and Part 7 concludes.

2. Key Concepts and Approach

2.1 Terms that are easily conflated

Several distinctions must be drawn before proceeding. First, there is a difference between grounds and reasons. Grounds refer to the factual and legal basis for a decision whereas reasons explain how the decision follows from these grounds. Article 22(5) refers to the communication of grounds which may be insufficient to satisfy the duty to give reasons. Second, there is a difference between recording, communicating, and publishing reasons. The obligation to give reasons may entail different responsibilities depending on the context, ranging from recording them on one's own files to communicating them to the affected person or publishing them generally. Anuradha Bhasin is particularly relevant in this respect, as it requires suspension orders to be reasoned and published[8]. Third, there is a difference between the mere existence of an obligation to give reasons and the standard of review applicable to such reasons. In SN Mukherjee , the Constitution Bench examined this issue, ruling that reasons need not be as detailed as those in a court decision and that an appellate authority need not repeat the reasons

[8] Anuradha Bhasin v Union of India (2020) 3 SCC 637.

for decision of the lower authority with which it agreed.[9] Fourth, there is a difference between reasons as stated in the decision and the effect of that decision on the individual. Prior to Anuradha Bhasin , many cases focused on whether an authority was quasi-judicial but this has since changed with greater emphasis being placed on the effects of the decision.

2.2 Intensity of obligation

By intensity, I refer to the degree to which reasons are required which may range from their complete absence to great detail. For convenience, intensity is divided into three aspects- whether reasons are required at all, the degree of detail required, and the consequences of insufficient reasons. Reasons may be entirely absent, provided insufficiently, or contain inadequate explanations for the decision. The consequences of this deficiency may range from the affected person being able to rely on them to challenge the decision to the administrative order being quashed or remitted for reconsideration. A further consideration is timing, as the Supreme Court has ruled that an order must be interpreted according to its terms at the time it was made and cannot be supplemented by subsequent affidavits.[10] By distinguishing between these aspects, one can better examine the extent to which they differ across decisions and therefore the degree of inconsistency in the case law.

2.3 Approach and standards of review

The paper proceeds from the culture of justification outlined by Mureinik which underlies diverse jurisdictions, holding that public authorities are entitled to act only when they are prepared to state their reasons for doing so. Within the framework of this approach reasons serve several purposes as discussed by Schauer and Shapiro they prevent rash decisions, improve the quality of decisions, make decisions reviewable and promote acceptance of them. [11]Two standards of review are relevant to this discussion. First, there is the Wednesbury standard according to which a court will only interfere with a decision if it is outside the bounds of reasonableness.[12] Second, the standard of proportionality, which requires the court to consider whether the measure in question satisfies a legitimate objective is suitable and necessar and does not entail an imbalance between objectives and means.[13] Proportionality is particularly relevant to this discussion as it is informed by interests which in turn informs the

[9] SN Mukherjee v Union of India (1990) 4 SCC 594, AIR 1990 SC 1984.
[10] Mohinder Singh Gill v Chief Election Commissioner (1978) 1 SCC 405.
[11] Schauer and Shapiro (n 1).
[12] Associated Provincial Picture Houses Ltd v Wednesbury Corp [1948] 1 KB 223.
[13] Modern Dental College and Puttaswamy (n 9).

reasons for decision.

2.4 The four contexts

The four contexts in which the duty to give reasons is examined are dismissal from service, preventive detention, licence revocation and economic or fiscal matters. Dismissals from government service entail an adverse affecting of livelihood, are governed by article 311, and generally follow service rules. Preventive detention measures generally infringe on personal liberty and are governed by article 22. Licence revocation generally entails deprivation of property or trade is governed by statutes and rules and depends on the nature of the licence. Finally, economic and fiscal matters range from adjudicative orders concerning the tax liabilities of a particular person to broader fiscal policy or commercial decisions. The choice of these four contexts is motivated by their differing effects on individuals and businesses and the presence of governing statutes and rules. It should be noted that the selection is purposeful these four areas do not represent the full scope of administrative law.

3. How the Duty Developed

3.1 Reasons as a help to supervision, 1961 to 1967

The early cases did not create a general obligation to give reasons they were limited to instances where such a requirement followed from the supervisory jurisdiction of the higher courts. In Harinagar Sugar Mills, the Central Government was hearing appeals under section 111 of the Companies Act 1956. The appeal was filed by company directors against an order of the Registrar of Companies refusing to register transfer of shares. The Registrar had declined the request without giving any reasons and a Deputy Secretary dismissed the appeal without giving any reasons either[14]. The five-judge bench held that the Central Government was, in essence acting as a tribunal when entertaining dispute and therefore its orders were subject to judicial review. The orders were therefore quashed and the appeals remitted for further hearing. The Court stated that the secrecy surrounding the proceedings did not vitiate the requirement of a reasoned decision as the orders must be sufficiently detailed to permit meaningful judicial review. Hidayatullah Jconcurring was of the view that the special leave petitions were not the appropriate forum for such disputes and that the appeal should have been admitted on the grounds of the directors' right to withhold the reasons and to be presumed to have acted consistently therewith. This shows that even in the early cases, the requirement for reasons was

[14] Harinagar (n 4) 356 to 57.

viewed as primarily a supervisory tool but that other considerations such as the right to secrecy in communications, could affect the strictness of this standard.

It is relevant to note that the development was not linear. In Madhya Pradesh Industries, the Central Government was exercising revisional powers under the Mineral Concession Rules 1960. The majority held that in agreeing with the reasons for order of the State Government, the Central Government was not obliged to state additional reasons for its order. However, Subba Rao J would have held that the Central Government was obliged to do so[15]. In the subsequent year, the Court in Bhagat Raja was asked to examine the same provisions and held that a speaking order was necessary, owing to the importance of the rights affected and the inadequacy of the reasons provided by the lower court.[16] The later case of Travancore Rayons has a similar headnote, referring to Bhagat Raja as overruling Madhya Pradesh Industries .[17] Clearly, there was no uniform standard, even within the Supreme Court itself.

3.2 From supervision to fairness, 1969 to 1978

In the next phase, the cases began to rely less on the Court's need for reasons in order to exercise its supervisory jurisdiction and focused more on the need for reasons for the affected person to challenge the order. Travancore Rayons once again concerned the Central Government's revisional powers, this time under the Central Excise and Salt Act 1944. The Central Government had dismissed an assessee's petition for revision in one sentence, stating that the objections raised had been found to be without merit after careful consideration. The Supreme Court held that this did not satisfy the requirement for a speaking order and remitted the matter for a reasoned order. In Mahabir Prasad Santosh Kumar, the Court held that a district magistrate's cancellation of a licence without recording reasons was violative of natural justice and therefore quashed the order.[18] In Woolcombers and Siemens , the Court held that the requirement of reasons applied to industrial tribunal awards and that quasi-judicial authorities were obliged to give reasons for their decisions.[19] What these cases have in common is that they go beyond the Court's own needs, taking into account the interests of the person affected by the order.

Maneka Gandhi is the first case to explicitly state that reasons must be given for administrative

[15] Madhya Pradesh Industries Ltd v Union of India AIR 1966 SC 671, [1966] 1 SCR 466.
[16] Bhagat Raja v Union of India AIR 1967 SC 1606, [1967] 3 SCR 302.
[17] Travancore Rayons Ltd v Union of India (1969) 3 SCC 868, AIR 1971 SC 862.
[18] Mahabir Prasad Santosh Kumar v State of UP (1970) 1 SCC 764, AIR 1970 SC 1302.
[19] Woolcombers of India Ltd v Woolcombers Workers Union (1974) 3 SCC 318, AIR 1973 SC 2758; Siemens Engineering and Manufacturing Co of India Ltd v Union of India (1976) 2 SCC 981, AIR 1976 SC 1785.

orders in order to satisfy article 14. The Government had impounded the passport of the petitioner under section 10(3)(c) of the Passports Act 1967 citing the public interest, and refused to give the reasons therefor, as section 10(5) allowed[20]. The Court held that depriving a person of liberty required adherence to the principles of fairness, justice, and reasonableness as mandated by articles 14 and 21. The Court therefore held that the general rule was for reasons to be provided and the exception the public interest applied only narrowly. It is pertinent to note that secondary sources on this case suggest that the Court felt that the reasons should normally be provided and that the exception applied only in the rarest of occasions. Maneka Gandhi demonstrates that the obligation to give reasons was now firmly grounded in the Constitution, while also demonstrating that the principle of the public interest continues to be a crucial consideration.

3.3 Consolidation and limits, 1978 to 1990

In the next phase, the cases consolidated this principle while limiting it in various ways. Mohinder Singh Gill clarified the requirement of timing,holding that an order cannot be supplemented by subsequent affidavits that add reasons not previously given. Ram Chander examined the requirement of reasons in the context of an appellate authority considering a railway servant's departmental appeal.[21] In Tulsiram Patel , a Constitution Bench examined article 311(2) which permits an authority to dispense with an inquiry if it is satisfied for reasons recorded in writing that holding it would not be reasonably practicable.[22] The Court upheld the dismissal of the striking railway employees, but held that the reasons therefor were sufficient to justify dispensing with the inquiry not to explain the decision. Thus, while the recording of reasons was constitutionally mandated, it served to justify eschewing a procedure rather than explain the substantive decision. Finally, SN Mukherjee examined the principle enunciated in Mohinder Singh Gill. The Constitution Bench held that absent express or implied exclusion, administrative authorities must record reasons for decisions that are judicial or quasi-judicial in nature as a matter of natural justice. [23]The Court therefore clarified that reasons must be recorded however brief they may be and whatever their format but stated that the Army Act 1950 and the rules thereunder excluded any obligation for the confirming authority to give reasons for confirming the findings of fact and sentence of a court martial. This case shows

[20] Maneka Gandhi v Union of India (1978) 1 SCC 248; Passports Act 1967, ss 10(3)(c) and 10(5).
[21] Ram Chander v Union of India (1986) 3 SCC 103.
[22] Union of India v Tulsiram Patel (1985) 3 SCC 398.
[23]SN Mukherjee (n 11) para 40.

both the strength of the principle and the ease with which it may be displaced by specific statutes.

3.4 Wider statements and statute, 1990 to 2020

Kranti Associates the principles governing reasons-giving obligations. It observes that Indian courts have uniformly held that the recording of reasons is mandatory, even in administrative decisions if they affect any person adversely. It states that reasons must be provided as part of the decision-making process as a matter of natural justice as an aid to review and as a safeguard against arbitrariness. This case underscores the importance of reasons to the decision-making process itself. [24]The Right to Information Act 2005, section 4(1)(d), was added later, but it only applies to public authorities and concerned persons. Thus, it does not go as far as the Constitution, explicitly requiring reasons only when an administrative or quasi-judicial decision is taken and not specifying the degree of detail or the consequences of failure to provide them. Anuradha Bhasin, in requiring the reasoned and published orders, examined the principle of proportionality, holding that the validity of a suspension depended on the necessity and proportionality of the measure.[25] It will be seen in Part 4 that this approach is fully consistent with the principle of proportionality.

3.5 Implications for analysis

Three observations may be made at this point. First, the requirement to give reasons developed from a supervisory tool to a principle of natural justice and became firmly entrenched as a general principle. At each stage, the obligation applied more widely, but the scope of the duty, particularly in terms of detail and remedies, remained unclear. Second, the duty was modified by considerations outside the sphere of the affected person and the nature of the authority, such as the statutory framework in SN Mukherjee or the secrecy of communications in Harinagar Sugar Mills , as well as the public interest in Maneka Gandhi and the question of practicability in Tulsiram Patel . Finally, the shift from Madhya Pradesh Industries to Bhagat Raja suggests that the Court was willing to change the content of the doctrine in response to differing sets of considerations. Part 4 examines this issue further.

[24]Kranti Associates (n 5) para 47.
[25] Anuradha Bhasin (n 10).

4. How Strictly Courts Demand Reasons in Different Settings

4.1 Dismissal and discipline

In service matters the duty is firm and partly rests on the text of the Constitution. Article 311(2) guarantees an inquiry and the second proviso allows departure from it only for reasons recorded in writing.[26] Departmental appellate authorities must also give reasons as Ram Chander shows. The picture is more nuanced than 'strict' however. Tulsiram Patel insisted on recorded reasons for dispensing with an inquiry but accepted that dispensation is allowed where an inquiry is not reasonably practicable, and it upheld mass dismissals on that ground. The reasons required at that stage address practicability, not the merits of the charge. So the requirement is firm, the depth depends on the question the reasons must answer and the usual remedy is to set aside the order because recording the reasons is a condition of the power.

4.2 Preventive detention

Detention is the setting in which the Constitution itself says what must be communicated. Article 22(5) requires the grounds to be communicated and the detenu to be given the earliest opportunity to make a representation, while article 22(6) allows the authority to withhold facts which it considers it against the public interest to disclose.[27] Two points stand out. The requirement is fixed by the text, so the courts have no discretion about it and the text builds in its own exception. The cases also show that courts will check whether the grounds exist and are relevant, even though the satisfaction of the authority is subjective.[28] Detention therefore shows two of the factors discussed below at work: the seriousness of the interest, which is liberty, pushes the duty up, while the public interest exception is already written into article 22(6).

4.3 Licence revocation and quasi-judicial decisions

The licence cases follow the same pattern. In Mahabir Prasad, the Court quashed a district magistrate's cancellation of a licence because no reasons were recorded. Bhagat Raja and Travancore Rayons involved a mining lease and an excise revision, and in both the Court insisted on speaking orders. These cases have little in common in subject matter, which ranges from foodgrain licences to mining leases to excise. What they share is the nature of the decision. Each decided someone's rights, each could be challenged before a higher authority, and each

[26] Constitution of India, art 311(2) and second proviso, cl (b).
[27] Constitution of India, art 22(5) and (6).
[28] Khudiram Das v State of West Bengal (1975) 2 SCC 81.

was close to adjudication. In this group the requirement is firm, the depth is modest because reasons need only be clear and not elaborate, and the usual remedy is to send the matter back for a reasoned order.

4.4 Economic policy and commercial decisions

It is often said that economic and fiscal decisions get lenient review. The cases support a narrower statement. Where a fiscal decision adjudicates one person's rights, the duty is applied strictly. Travancore Rayons was an excise revision and the Court sent it back for want of reasons. Leniency belongs to decisions that are legislative or policy in nature, or commercial. RK Garg accepted that laws regulating economic activity deserve a wider margin than laws affecting civil liberties[29] and Tata Cellular limited judicial review of commercial and tender decisions to the decision-making process and not the merits.[30] Neither case says reasons are unnecessary. Both reduce how closely a court examines whatever justification is offered. The better view is that economic decisions are not uniformly treated leniently. What matters is whether the decision is adjudicative or one of policy and that is itself one of the recurring factors discussed next.

4.5 Four factors that keep recurring

Across the four settings, the Court's own reasoning keeps returning to four factors. The first is the nature of the function. Quasi-judicial and appellate functions attract a firm requirement, while policy and commercial functions attract more deference. The second is the seriousness of the interest affected, with liberty and livelihood at the top, which explains why Kranti Associates ties the duty to prejudice to the individual. The third is whether the decision can be reviewed. The line from Harinagar to Bhagat Raja is expressly about enabling supervision, and SN Mukherjee recognises that the need for reasons is greater where an order is subject to appeal. The fourth is any competing interest, such as the statutory scheme, confidentiality, practicability or the public interest, which can reduce or remove the duty. The Court has not announced these as a test. I have drawn them out of the cases, and part of my argument is that the law would be more predictable if the Court stated them openly.

[29] RK Garg v Union of India (1981) 4 SCC 675.
[30] Tata Cellular v Union of India (1994) 6 SCC 651.

5. Is This Called proportionality and Where Courts Are Inconsistent

5.1 The claim to be tested

The idea tested here is that Indian courts apply in substance a variable-strictness standard to the reasons requirement, and that this works as proportionality in practice. To test it, the claim has to be split into three. The first is calibration: does the strictness of the duty follow what is at stake? The second is structure do the courts use anything like the staged analysis of legitimate aim, suitability, necessity and balance? The third is articulation: do the courts explain the variation in terms of proportionality or any other stated principle? The idea holds only to the extent that all three are shown.

5.2 Calibration, structure and articulation

Calibration is clearly present. The four factors in Part 4 are a form of graded scrutiny, and the Court's references to prejudice, to the need for reasons where an appeal lies and to the public interest all weigh the burden of giving reasons against the interest in receiving them. Structure is mostly absent. Apart from Anuradha Bhasin, none of the cases examined asks whether the requirement of reasons itself pursues a legitimate aim, is suitable and necessary, and strikes a fair balance. The Court usually reasons by analogy with earlier categories. Articulation is the weakest element. The Court explains each result by the facts before it, but it has never said that strictness varies with the four factors identified here.

Anuradha Bhasin is the useful exception because it joins the two doctrines. A court cannot decide whether a suspension of telecom services was necessary and proportionate unless the authority has said why it was needed and why a lesser step would not do. A reasoned and published order is therefore what makes proportionality review possible. This is a more exact way to put the relationship than calling it de facto proportionality. The reasons requirement does not apply proportionality to itself. It makes proportionality review of the underlying decision possible, and its own strictness matches the strictness of the review that will follow.

5.3 Objections

There are three objections. The first is that much of the variation comes from the text and not from judicial calibration. The strict approach to detention reflects article 22, the approach to dismissal reflects article 311 and the result in SN Mukherjee reflects the Army Act. If text explains the pattern, no wider principle is needed. This answer is only partly right. Text explains the trigger in those settings, but it does not explain depth or remedy, and it explains

nothing in the large area of unregulated administrative decisions, which is where the law is least predictable. The second objection is that the label 'quasi-judicial', and not the interest affected, drives results so that calibration to stakes is an illusion. Kranti Associates weakens this objection by tying the duty to prejudice, although it is a statement of principle and not a holding on the facts of a particular category. The third is that proportionality is a structured test, and calling a loose weighing exercise by that name waters the concept down. That is correct as to form. It supports the narrower conclusion that the Indian practice is proportionality in effect and not in form, and that the real finding is calibration without articulation.

5.4 Inconsistency

An unarticulated standard produces inconsistency in three ways. The first is over time. Madhya Pradesh Industries and Bhagat Raja reached opposite results on closely similar facts within about two years and the earlier case was treated as overruled. The second is a difference in formulation. Kranti Associates states a wide rule tied to prejudice while SN Mukherjee states a narrower rule tied to judicial or quasi-judicial functions, with exceptions where the requirement is excluded expressly or by implication. Both are authoritative, and a lower forum facing an administrative decision with no clear label has to choose between them. The third kind is inconsistency between forums. I could not demonstrate this from the material used. What the cases show is the conditions in which it would arise namely an unarticulated standard applied by many forums to many kinds of decision but not that it has in fact arisen. Proving it would need a systematic study of High Court and tribunal decisions, which is outside the scope of this paper.

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5.5 What this part establishes

The analysis supports a qualified version of the idea. The duty to give reasons is calibrated to stakes through the four factors but the courts do not apply a structured proportionality test and have not stated the calibration. It is better described as the infrastructure of proportionality review that is itself graded. Inconsistency is shown within the Supreme Court's own decisions and is likely between forums, but the second point has still to be proved. If the calibration is real but unstated, the sensible response is to state it, which is the subject of Part 6.

6. A Clearer Framework

The framework suggested here is drawn from what the Court already does, put in a form that can be applied openly. It has four parts. First, there should be a presumption that an authority making a decision that adversely affects a person's rights or interests must record reasons, which is how Kranti Associates describes the long-standing judicial trend. Second, the depth of the reasons should rise with the seriousness of the interest, the availability of review and the quasi-adjudicative character of the function and fall where the decision is one of policy or is commercial. Third, where an authority relies on a competing interest to withhold reasons, it should record that interest and why it applies, so that a court can examine the claim. This borrows the idea behind article 22(6) and section 10(5) of the Passports Act but applies it generally and makes it open to judicial scrutiny. Fourth, the remedy should be graded the matter should be sent back for a reasoned order where the failure is only one of articulation and the record shows that proper material was consideredand the order should be quashed where there are no reasons because none could be given.

Two objections must be answered. One is that the framework could be rigid and could burden officials who decide large numbers of cases. The scale of depth answers part of this, because it allows brief reasons where less is at stake, as SN Mukherjee already accepts. The other is that a statute might freeze a doctrine that has grown through judicial adaptation. The risk is real, but at present a person has no reliable statement of the law for the large class of administrative decisions that carry no clear label. Other jurisdictions give a right to request a statement of reasons by statute, for example under the Australian Administrative Decisions (Judicial Review) Act 1977,[31] which suggests that a statutory minimum can sit alongside judicial development of depth and remedy. The framework is my own proposal and not an established test.

7. Conclusion

The duty to give reasons in Indian administrative law was not given by the Constitution or by a general statute. The courts built it through judicial review. It began in Harinagar Sugar Mills as a condition of effective supervision and grew, through fairness and the culture of justification, into a general expectation of reasoned decision-making. The main finding of this paper is that the duty has a consistent logic that the courts have not announced. Its strictness varies with the nature of the function, the seriousness of the interest, the availability of review

[31] Administrative Decisions (Judicial Review) Act 1977 (Cth), s 13.

and any competing interest. This is proportionality in effect, because it adjusts scrutiny to what is at stake but not in form because no staged test is used and the variation is rarely explained. Two points in the starting idea had to be refined. Fiscal decisions are not always reviewed leniently, since adjudicative fiscal decisions are held to a strict standard and leniency belongs to policy and commercial decisions. And inconsistency between forums although plausible is not shown by the cases studied. What is shown is inconsistency within the Supreme Court's own decisions, from Madhya Pradesh Industries to Bhagat Raja and in the different wording of SN Mukherjee and Kranti Associates. The study is limited by its doctrinal method its reliance on Supreme Court decisions and its use of secondary summaries for some cases. Further work could test the four factors against a sample of High Court and tribunal decisions, check whether the framework in Part 6 predicts outcomes better than the present categories, and consider whether judicial statement or legislation is the better route. The requirement of reasons matters because it is how a legal system shows that power can be questioned. Making the grading of that requirement visible would be a modest but real step in that direction.

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