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THE EVOLUTION OF WEDNESBURY UNREASONABLENESS VS. PROPORTIONALITY TEST: DOCTRINAL MIGRATION, INTENSITY OF REVIEW, AND THE SEARCH FOR SUBSTANTIVE COHERENCE IN JUDICIAL SCRUTINY

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Abstract

The standard of judicial scrutiny applied by supervisory courts to evaluate discretionary executive action constitutes one of the most vigorously contested battlegrounds in comparative administrative and constitutional jurisprudence. For over half a century, the common law world operated under the hegemony of 'Wednesbury unreasonableness'—established by Lord Greene M.R. in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation (1948). Designed as a defensive bulwark to preserve the separation of powers and deter merit-based judicial overreach, Wednesbury instituted an extraordinarily high threshold of irrationality, demanding that an impugned administrative decision be 'so unreasonable that no reasonable authority could ever have come to it.' However, the ascendancy of human rights constitutionalism, the globalization of administrative norms, and the cross-border migration of legal doctrines exposed the profound limitations of the Wednesbury doctrine: its tautological formulation, subjective elasticity, procedural opacity, and inherent incapacity to safeguard fundamental human liberties against subtle executive encroachments. In response, modern public law witnessed the rapid doctrinal ascendancy of the European continental principle of proportionality (Verhältnismäßigkeitsgrundsatz). Structured through a rigorous four-pronged heuristic—encompassing legitimate aim, suitability, necessity (least restrictive means), and balancing in the strict sense—proportionality offers a transparent, rights-centric, and structured methodology for interrogating sovereign action. This paper undertakes an exhaustive, critical analysis of the historical transition and doctrinal tension between Wednesbury unreasonableness and the proportionality test across the United Kingdom and India. It explores the early common law attempts to calibrate Wednesbury via 'anxious scrutiny' and 'sub-Wednesbury' standards (R v. Ministry of Defence, ex parte Smith; R (Daly) v. Secretary of State for the Home Department;

Pham; Keyu) alongside the landmark transformation in Indian constitutional law (Tata Cellular; Om Kumar v. Union of India; Modern Dental College; K.S. Puttaswamy; Anuradha Bhasin). Evaluating core theoretical critiques concerning institutional competence, judicial supremacism, and democratic legitimacy, this study demonstrates that while Wednesbury retains residual utility in purely economic, macro-policy, and utilitarian allocative determinations, proportionality has established itself as the indispensable constitutional standard for the protection of fundamental human rights. The paper concludes by delineating a coherent, bifurcated model of judicial review harmonizing democratic governance with the Rule of Law.

Keywords: ***Wednesbury Unreasonableness, Proportionality Test, Judicial Review, Administrative Law, Fundamental Rights, Anxious Scrutiny, Article 14, Separation of Powers, Transformative Constitutionalism, Puttaswamy.***

1. THE DIALECTIC OF JUDICIAL RESTRAINT AND RIGHTS PROTECTION

The primary objective of judicial review in administrative law is the reconciliation of two competing constitutional imperatives: on the one hand, the democratic necessity to accord executive authorities adequate discretionary latitude to implement complex public policies; on the other, the foundational requirement of the Rule of Law that public power must not be exercised arbitrarily, unlawfully, or in violation of fundamental liberties. If courts routinely substitute their own subjective preferences for the determinations of elected or specialized administrative bodies, the constitutional doctrine of the separation of powers is fractured, and the judiciary degenerates into an unrepresentative appellate super-executive. Conversely, if courts abdicate supervisory scrutiny and defer uncritically to executive ipse dixit, the citizen is left defenseless against administrative overreach and bureaucratic authoritarianism.

For the greater part of the twentieth century, Anglo-Commonwealth jurisprudence resolved this tension through the doctrine of 'Wednesbury unreasonableness,' derived from the judgment of the English Court of Appeal in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B. 223. Rooted in traditional Diceyan constitutionalism and statutory deference, Wednesbury maintained that supervisory courts were concerned strictly with the legality of the decision-making process rather than the substantive merits of the decision itself. A court could intervene on the ground of unreasonableness only if the impugned measure touched an extreme threshold of irrationality—amounting to a decision so outrageous that no sensible authority properly instructed in the law could ever have conceived it.

However, the geopolitical and normative transformation of public law in the post-World War II era—marked by the drafting of fundamental rights charters, the enactment of the European Convention on Human Rights (ECHR), and the evolution of transformative constitutions in the Global South, notably in India—profoundly disrupted this deferential equilibrium. When state action encroaches upon fundamental constitutional freedoms—such as personal liberty, privacy, freedom of expression, and bodily autonomy—the deferential, monolithic threshold of Wednesbury unreasonableness proves structurally inadequate. Courts and scholars observed that Wednesbury functioned as an intellectual straitjacket, enabling executive authorities to infringe constitutional rights with

impunity so long as their measures did not plunge into manifest madness or blatant bad faith.

Out of this normative dissatisfaction emerged the transnational migration of the doctrine of proportionality (Verhältnismäßigkeitsgrundsatz). Originating in nineteenth-century Prussian administrative jurisprudence and constitutionalized in post-war Germany, proportionality migrated across the European Court of Human Rights (ECtHR), the European Court of Justice (ECJ), the United Kingdom Supreme Court, and the Supreme Court of India. Unlike the amorphous and tautological formulation of Wednesbury, proportionality provides a structured, sequential, four-tier analytical framework that explicitly interrogates the relationship between the legislative objective, the suitability of the measure, the availability of less intrusive alternatives, and the normative balance between public necessity and individual rights.

This paper presents a comprehensive, comparative analysis of the evolution, conflict, and progressive convergence of Wednesbury unreasonableness and the proportionality test. Tracing the trajectory of both doctrines through English and Indian administrative jurisprudence, it evaluates whether proportionality has completely superseded Wednesbury or whether both doctrines coexist within a dynamic, context-sensitive continuum of judicial review.

2. THE GENESIS AND ANATOMY OF WEDNESBURY UNREASONABLENESS

A. The Classic Pronouncement: Associated Provincial Picture Houses (1948)

The classic formulation of common law unreasonableness was authored by Lord Greene, Master of the Rolls, in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B. 223. In that case, the local municipal authority granted a cinema proprietor a statutory license to open on Sundays under Section 1(1) of the Sunday Entertainments Act, 1932, but imposed a restrictive condition: 'no children under the age of fifteen years shall be admitted to any entertainment, whether accompanied by an adult or not.' The cinema owners challenged this licensing condition as unreasonable, arguing that it interfered unwarrantedly with parental discretion and commercial operations.

Dismissing the challenge, Lord Greene M.R. articulated the foundational boundaries of judicial review over discretionary executive power. He emphasized that the court does not sit as a court of appeal to determine whether the condition was wise or desirable. Instead, judicial review is confined to determining whether the authority acted within statutory bounds. In defining the grounds of judicial intervention, Lord Greene formulated the two-fold concept of unreasonableness:

> *"The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere."*

Lord Greene cautioned that to prove a case of that kind would require 'something overwhelming.' In common law jurisprudence, this standard came to be known as 'substantive Wednesbury unreasonableness' or 'Wednesbury irrationality,' to distinguish it from the procedural defects of failing to consider relevant factors or considering irrelevant matters.

B. The GCHQ Re-Articulations: Lord Diplock's Tripartite Taxonomy

The conceptual architecture of Wednesbury was

further consolidated and refined by the House of Lords in the seminal case of Council of Civil Service Unions v. Minister for the Civil Service [1985] A.C. 374 (popularly known as the GCHQ case). In reviewing the Prime Minister's decision to ban trade union membership at the Government Communications Headquarters without prior consultation, Lord Diplock organized the grounds of judicial review into a celebrated tripartite classification:

1. Illegality: The decision-maker must correctly understand the law that regulates the decision-making power and must give effect to it.
2. Irrationality: Which Lord Diplock succinctly defined as 'what can by now be succinctly referred to as 'Wednesbury unreasonableness'... It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.'
3. Procedural Impropriety: Encompassing the failure to observe statutory procedural mandates or the common law rules of natural justice and fairness.

Significantly, Lord Diplock added a prescient obiter dictum that foreshadowed the modern transformation of public law. He contemplated that the common law might in the future witness the adoption of a fourth ground of review: the principle of 'proportionality,' which was already recognized in the administrative systems of European Community member states.

C. Theoretical Scaffolding: Democratic Mandate and the Merits-Legality Divide

The philosophical justification for the stringent, near-impassable threshold of Wednesbury irrationality rests upon democratic constitutionalism and institutional competence. In a parliamentary democracy, statutory discretionary powers are conferred upon ministers, municipal councils, or regulatory agencies because those bodies possess democratic legitimacy, political accountability to the electorate, and specialized institutional resources. Supervisory courts possess none of these attributes. Judges are un-elected, politically unaccountable, and unsuited to make complex policy trade-offs or economic allocations.

Consequently, Wednesbury instituted a strict 'merits-legality divide.' The court's role is strictly confined to policing the perimeter of the decision-maker's statutory jurisdiction. Provided the executive remains within that perimeter, the choice among competing policy options belongs entirely to the administrator. By requiring an applicant to establish that a decision was so absurd as to border on lunacy ('defiance of logic'), Wednesbury established a powerful protective shield against judicial usurpation of executive authority.

3. THE STRUCTURAL DEFICIENCIES OF WEDNESBURY IN THE ERA OF RIGHTS

Notwithstanding its decades-long dominance, the Wednesbury formulation became the target of sustained academic and judicial critique. As public law shifted its focus from merely maintaining procedural regularity to actively protecting constitutional rights, the inherent structural flaws of Wednesbury became painfully acute:

A. Circularity, Tautology, and Subjectivity

The primary analytical defect of Wednesbury is its circular and tautological phrasing. To define an unreasonable decision as one that 'no reasonable authority could ever have come to' offers zero objective normative guidance. It merely rephrases the inquiry: What makes an authority reasonable? In practice, this circularity leaves the standard entirely dependent upon the subjective instincts of the individual presiding judge. As Lord Cooke of Thorndon memorably declared in R v. Chief Constable of Sussex, ex parte International Trader's Ferry Ltd [1999] 2 A.C. 418, Wednesbury is an 'unfortunate formulation' that sets the threshold so high that it amounts to an abdication of judicial duty, while simultaneously masking subjective judicial impressions under the rhetorical facade of 'irrationality.'

B. The Problem of Extreme Deference and

Rights Deprivation

The high threshold of Wednesbury created disastrous consequences when applied to state actions impinging upon fundamental human rights. Because an applicant had to prove that the executive decision was virtually lunatic or completely devoid of logic, executive actions that inflicted grave, disproportionate harm upon individuals routinely survived judicial scrutiny, provided the state could point to any colorable public objective.

This pathology was demonstrated in R v. Ministry of Defence, ex parte Smith [1996] Q.B. 517. The British Ministry of Defence maintained an absolute blanket policy prohibiting homosexuals from serving in the armed forces. Armed forces personnel of exemplary service records were subjected to humiliating interrogations and administratively discharged solely due to their sexual orientation. When they challenged this policy, the English Court of Appeal acknowledged that the policy inflicted devastating personal distress upon the applicants. Nevertheless, applying the Wednesbury irrationality standard, Sir Thomas Bingham M.R. held that the court could not strike down the policy, because the Ministry could point to the advice of senior military commanders who genuinely believed that the presence of homosexuals would impair troop cohesion and operational readiness. The policy could not be characterized as 'outrageous in its defiance of logic,' and therefore survived Wednesbury scrutiny.

When the discharged servicemen subsequently appealed to the European Court of Human Rights in Smith and Grady v. United Kingdom (1999) 29 E.H.R.R. 493, the Strasbourg court unanimously found that the United Kingdom had violated Article 8 (Right to Respect for Private and Family Life) of the ECHR. More critically, the ECtHR found a violation of Article 13 (Right to an Effective Remedy) specifically because the domestic Wednesbury threshold was so high that it effectively precluded English courts from conducting an adequate, substantive inquiry into whether the interference with the applicants' fundamental rights was justified and proportionate. Smith and Grady delivered a devastating blow to the doctrinal credibility of Wednesbury in human rights adjudication.

C. The Artificiality of Variable-Intensity Wednesbury: 'Anxious Scrutiny'

To mitigate the harshness of the Wednesbury threshold without formally abandoning it, English common law courts attempted to introduce variable intensities of review. In Bugdaycay v. Secretary of State for the Home Department [1987] A.C. 514 and later in Ex parte Smith, the courts formulated the doctrine of 'anxious scrutiny' (or 'sub-Wednesbury' review). Under this calibrated standard, where state action threatened fundamental human liberties—such as the right to life or personal freedom from torture upon deportation—the court would subject the administrative justification to rigorous, heightened scrutiny before accepting it as reasonable.

While well-intentioned, 'anxious scrutiny' created conceptual confusion. It resulted in a fractured jurisprudence where Wednesbury meant different things in different contexts: 'super-Wednesbury' (hyper-deference) in macroeconomic and national security matters; traditional Wednesbury in ordinary licensing and planning permissions; and 'anxious scrutiny' in cases touching fundamental rights. This sliding scale lacked objective boundaries, forcing judges to modify an inherently unyielding standard through subjective linguistic acrobatics.

4. THE EUROPEAN GENESIS AND DOCTRINAL ANATOMY OF THE PROPORTIONALITY PRINCIPLE

A. Historical Roots: From Prussian Administrative Law to the German Basic Law

The doctrine of proportionality (Verhältnismäßigkeitsgrundsatz) originated not in Anglo-American common law, but in eighteenth- and nineteenth-century German public law. Its earliest judicial articulation is traced to the landmark Kreuzberg judgment of the Prussian Higher Administrative Court (Preußisches

Oberverwaltungsgericht) in 1882. In that case, the Berlin police commissioner enacted a regulation restricting the height of residential buildings surrounding the Kreuzberg war memorial, ostensibly to preserve the scenic and aesthetic view of the monument. The Prussian court invalidated the police decree, holding that the sovereign police power was legally limited to protecting the public against physical dangers; the police could not intrude upon private property rights for aesthetic purposes. The court declared: 'The police can only use measures that are strictly necessary to avert dangers to public order.'

Following World War II, the Federal Constitutional Court of Germany (Bundesverfassungsgericht) constitutionalized proportionality as an unwritten principle derived directly from the Rule of Law (Rechtsstaatsprinzip) and the nature of fundamental rights under the Basic Law (Grundgesetz). In the landmark Pharmacy Case (Apothekenurteil, BVerfGE 7, 377, 1958), the court struck down statutory restrictions on opening new pharmacies, establishing that state interference with individual occupational freedoms must satisfy an exacting, multi-tiered test of proportionality.

B. The Four-Pronged Analytical Architecture of Proportionality

Through decades of refined European and comparative constitutional jurisprudence, proportionality evolved into a structured, sequential, four-pronged inquiry. When a public authority enacts a measure that infringes upon a constitutional or human right, the court interrogates the measure across four cumulative steps:

1. Legitimate Aim (Zwecktauglichkeit / Proper Purpose): The state measure must pursue an objective that is constitutionally valid, legally permissible, and of sufficient public importance to justify encroaching upon an individual right. A measure motivated by illegitimate, discriminatory, or unauthorized statutory purposes fails at the threshold.

2. Suitability / Rational Connection (Geeignetheit): The means chosen by the state must be causally and rationally capable of facilitating the achievement of the asserted legitimate objective. If the state action has no logical or empirical connection to the declared goal, it is arbitrary and invalid.

3. Necessity / Least Restrictive Means (Erforderlichkeit): The state must demonstrate that no less intrusive, equally effective alternative was reasonably available to achieve the specified legitimate aim. If the executive could accomplish its objective through an alternative measure that imposes a lesser burden on individual liberties, the chosen measure fails the test of necessity. This component demands that the state use a scalpel rather than a sledgehammer—ensuring that rights are curtailed only to the minimum extent necessary.

4. Balancing in the Strict Sense / Proportionality Stricto Sensu (Angemessenheit): Even if the measure is suitable and necessary, the court must conduct a normative balancing exercise. It must weigh the social importance of achieving the legislative aim against the severity of the harm inflicted upon the individual right. If the detrimental impact on the constitutional right is disproportionate and excessive in comparison to the marginal public benefit achieved, the measure is unconstitutional. As Professor Robert Alexy conceptualized in his Law of Balancing: 'The greater the degree of non-satisfaction of, or detriment to, one principle, the greater must be the importance of satisfying the other.'

C. The Qualitative Leap: Transparency, Burden of Proof, and Structured Justification

The transition from Wednesbury to proportionality represents a profound methodological and qualitative leap in judicial review. This qualitative difference manifests across three dimensions:

(i) Shift in Burden of Proof: Under Wednesbury, the legal burden rests entirely upon the citizen to prove that the executive decision crossed into the realm of outrageous irrationality. Under proportionality, once the applicant establishes a prima facie interference with a recognized right, the burden shifts to the state to affirmatively justify

each prong of the four-tier test through cogent evidence and empirical justification.

(ii) Structured Transparency: Wednesbury conceals the judicial reasoning process behind subjective epithets such as 'absurd' or 'perverse.' Proportionality forces both the state and the judge to externalize their reasoning, step by step, laying bare the precise factual justifications, alternatives considered, and value choices made.

(iii) In-Depth Doctrinal Scrutiny: While Wednesbury permits the court to examine only whether the decision-maker took relevant matters into account, proportionality empowers the court to examine the substantive weight and balancing assigned by the decision-maker to competing public and private interests.

5.THE ENGLISH JUDICIAL DILEMMA: FROM WEDNESBURY TO PROPORTIONALITY

A. The Turning Point: R (Daly) and Lord Steyn's Masterly Synthesis

Following the enactment of the Human Rights Act 1998 (HRA), which incorporated the European Convention into domestic British law, the English judiciary could no longer maintain the fiction of traditional Wednesbury unreasonableness in human rights cases. The turning point arrived with the historic decision of the House of Lords in R (Daly) v. Secretary of State for the Home Department [2001] UKHL 26; [2001] 2 A.C. 832. In Daly, a prisoner challenged a blanket prison policy mandating that prison officers conduct searches of prisoners' cells in their absence, including the examination of privileged legal correspondence between the prisoner and his solicitor. The Home Secretary defended the policy on security grounds, asserting that prisoners might intimidate officers or learn search techniques. The House of Lords struck down the policy as unlawful, holding that it breached the common law and Convention rights to confidential legal consultation.

Delivering a seminal speech, Lord Steyn explicitly established the superiority of proportionality over Wednesbury unreasonableness in rights adjudication. He delineated the three critical operational differences separating the two doctrines:

> *"First, the doctrine of proportionality may require the reviewing court to assess the balance which the decision maker has struck, not merely whether it is within the range of rational or reasonable decisions. Secondly, the proportionality test may go further than the traditional grounds of review inasmuch as it may require attention to be directed to the relative weight accorded to interests and considerations. Thirdly, even the heightened scrutiny test developed in R v. Ministry of Defence, ex parte Smith is not necessarily appropriate to the protection of human rights... The intensity of review is somewhat greater under the proportionality approach... In law context is everything."*

Lord Steyn demonstrated that under the traditional Wednesbury test, the prison policy might have survived because the Home Secretary's security concerns were not irrational; but under proportionality, the blanket exclusion of the prisoner during legal document searches failed the test of necessity, because less restrictive methods (such as examining correspondence in the prisoner's presence without reading it) were readily available.

B. The Survival Question: Pham, Keyu, and Common Law Proportionality

In subsequent years, the UK Supreme Court grappled with whether the proportionality test could cross the boundary from HRA/Convention cases into pure domestic common law judicial review. In Pham v. Secretary of State for the Home Department [2015] UKSC 19, which concerned the deprivation of British citizenship from a suspected terrorist, Lord Mance, Lord Sumption, and Lord Carnwath affirmed that the common law

itself possessed the doctrinal vitality to apply a proportionality-style review where fundamental common law rights were at stake.

However, in Keyu v. Secretary of State for Foreign and Commonwealth Affairs [2015] UKSC 69, an enlarged nine-judge panel of the UK Supreme Court hesitated to administer the final death blow to Wednesbury. The appellants asked the court to definitively discard Wednesbury unreasonableness across all of domestic administrative law in favor of proportionality. Lord Neuberger acknowledged that the argument had formidable scholarly backing, observing that Wednesbury and proportionality were two competing standards with profoundly different implications for the relationship between the judiciary and the executive. However, the Court declined to abolish Wednesbury on the facts of the case, holding that such a profound constitutional re-engineering should be undertaken only after comprehensive argument before a dedicated bench.

Thus, in contemporary English administrative law, a dual regime persists: proportionality governs cases involving the Human Rights Act 1998 and retained EU law, while Wednesbury—often softened by variable intensity—continues to govern non-human-rights challenges in traditional domestic public law.

6. THE INDIAN CONSTITUTIONAL ODYSSEY: FROM TATA CELLULAR TO PUTTASWAMY

A. The Classical Era of Deference: Tata Cellular and Wednesbury Incorporation

Following the adoption of the Constitution of India in 1950, the Supreme Court of India readily incorporated English administrative law concepts into its supervisory jurisprudence under Articles 32 and 226. In the landmark case of Tata Cellular v. Union of India, (1994) 6 SCC 651, a three-judge bench led by Justice S. Mohan conducted an exhaustive review of government contracting and tender procedures. The Court formally adopted the Wednesbury principle as the bedrock standard governing judicial review of administrative action in India:

> *"The principles deducible are: (1) The modern trend points to judicial restraint in administrative action. (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible. (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract... (5) The government must have freedom of contract... The decision must not only be tested by the application of Wednesbury principle of reasonableness... but must be free from arbitrariness not affected by bias or actuated by mala fides."*

Tata Cellular firmly embedded Wednesbury irrationality into Indian administrative law, particularly in commercial, financial, and contractual matters where the executive acts in a managerial capacity.

B. The Doctrinal Bifurcation: Om Kumar v. Union of India (2001)

The first systematic Indian judicial effort to harmonize Wednesbury unreasonableness with the European doctrine of proportionality occurred in the landmark judgment of Om Kumar v. Union of India, (2001) 2 SCC 386. Authored by Justice M. Jagannadha Rao, the Supreme Court traced the comparative origins of proportionality and delivered a definitive ruling bifurcating the standards of judicial review in India:

1. Fundamental Freedoms (Articles 19 and 21): Where an administrative action or a statutory provision encroaches upon the fundamental freedoms guaranteed under Article 19(1) (speech, assembly, occupation, movement) or the right to life and liberty under Article 21, the Supreme Court has always exercised a proportionality

review. Under Articles 19(2) through 19(6), restrictions must be 'reasonable,' and Indian courts have historically examined whether the restriction was excessive or disproportionate to the public mischief sought to be prevented. In this domain, proportionality is intrinsic to the constitutional text.

2. Ordinary Administrative Discretion and Article 14: However, where an administrative action is challenged under the non-arbitrariness doctrine of Article 14 (as formulated in E.P. Royappa), the standard of review remained tethered to Wednesbury unreasonableness. Justice Rao held that when the executive exercises disciplinary power or discretionary administrative choice, the court will not substitute its own view on penalty or policy unless the executive action is so arbitrary and irrational that it shocks the conscience of the court.

Om Kumar thus established a bifurcated model: proportionality for primary fundamental freedoms (Articles 19 and 21), and Wednesbury irrationality for general administrative choices under Article 14.

C. The Modern Constitutional Renaissance: Modern Dental College and Puttaswamy

The bifurcated limitation imposed by Om Kumar was decisively dismantled in the constitutional renaissance of the 2010s. In Modern Dental College and Research Centre v. State of Madhya Pradesh, (2016) 7 SCC 353, a Constitution Bench presided over by Justice A.K. Sikri formally embraced the structured four-tier proportionality test formulated by Canadian and German jurisprudence (notably citing the work of Professor Aharon Barak). The Court held that any state interference with constitutional rights must satisfy the four cumulative requirements of proper purpose, rational connection, necessity (least restrictive means), and balancing stricto sensu.

The definitive constitutional consolidation of proportionality occurred in the historic nine-judge bench judgment in K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1. In unanimously declaring the right to privacy to be a fundamental right protected under Article 21, the Supreme Court unequivocally established proportionality as the mandatory, non-negotiable constitutional standard governing any state encroachment upon privacy and personal liberty.

Dr. Justice D.Y. Chandrachud (as he then was) and Justice Sanjay Kishan Kaul articulated that any law or executive order encroaching upon privacy must satisfy three essential requirements: (1) Legality (the existence of an enacted law); (2) Legitimate State Aim; and (3) Proportionality (a rational nexus and least intrusive interference). In the subsequent Aadhaar Constitution Bench decision (K.S. Puttaswamy v. Union of India, 2019), the Supreme Court applied this structured four-pronged test to scrutinize mandatory biometric identity integration, striking down several provisions (such as private corporate access under Section 57) for failing the necessity and balancing prongs.

D. Proportionality in Crisis and Public Order: Anuradha Bhasin (2020)

The ultimate test of the proportionality doctrine occurred in Anuradha Bhasin v. Union of India, (2020) 3 SCC 637, concerning the prolonged suspension of internet services and severe restrictions on movement under Section 144 of the Code of Criminal Procedure in Jammu & Kashmir following the abrogation of Article 370. The Union Government justified the blanket shutdowns on grounds of national security, anti-terrorism, and public order.

The Supreme Court, speaking through Justice N.V. Ramana, decisively rejected the state's plea for blind Wednesbury deference in matters of public safety. The Court declared that freedom of speech and expression and the right to carry on trade and profession over the internet are constitutionally protected under Article 19(1)(a) and 19(1)(g). Consequently, any restriction must strictly satisfy the test of proportionality. Justice Ramana held:

> *"The proportionality principle can be easily summarized by the following four sub-principles: (1) Legitimate goal stage; (2) Suitability or rational connection stage; (3) Necessity stage*

> *(least restrictive means); and (4) Balancing stage (proportionality stricto sensu)... An order suspending internet services indefinitely is impermissible under the Temporary Suspension of Telecom Services Rules. The State cannot take recourse to a sledgehammer when a less intrusive remedy is available... Any order restricting fundamental freedoms must be published, state reasons, and be subject to periodic review."*

Anuradha Bhasin firmly established that even during state security crises, executive orders cannot escape judicial scrutiny under the cover of unguided discretion; every restrictive order must pass the exacting gauntlet of proportionality.

7. COMPARATIVE DOCTRINAL EVALUATION: WEDNESBURY VS. PROPORTIONALITY

To synthesize the evolution of both doctrines, the core conceptual distinctions between Wednesbury unreasonableness and the proportionality test can be analyzed across five vital parameters:

1. Analytical Structure vs. Single Tautological Metric: Wednesbury provides a single, undifferentiated, and intuitive standard ('outrageous in its defiance of logic'). Proportionality provides a four-stage sequential framework (Legitimate Aim -> Suitability -> Necessity -> Balancing). The structured inquiry prevents judges from jumping straight to conclusions based on visceral reactions, compelling a systematic interrogation of facts, empirical evidence, and administrative justifications.

2. Intensity of Review and Merits Scrutiny: Wednesbury strictly enforces the merits-legality divide, prohibiting the reviewing court from examining the weight given to competing interests. Proportionality deliberately bridges this divide: at the necessity and balancing stages, the court is constitutionally required to assess whether the decision-maker assigned disproportionate weight to a state goal at the cost of an individual right.

3. Procedural Transparency and the Culture of Justification: Wednesbury fosters a culture of administrative authority: the executive's decision stands unless an applicant proves madness. Proportionality enforces what South African scholar Etienne Mureinik termed a 'culture of justification': the state must publicly articulate and defend the reasons, data, alternatives, and necessity underlying every coercive action it takes against the citizenry.

4. Allocation of the Burden of Proof: Under Wednesbury, the citizen carries the heavy burden of establishing irrationality. Under proportionality, once an interference with a constitutional right is demonstrated, the constitutional burden shifts to the sovereign state to establish that its measure meets all four prongs of proportionality.

5. Institutional Competence vs. The Fear of Judicial Supremacism: The primary critique of proportionality is the danger of judicial overreach. By evaluating 'least restrictive means' and 'balancing,' judges risk substituting their subjective policy preferences for the democratic choices of elected governments. Wednesbury, despite its flaws, remains superior in safeguarding judicial modesty in non-rights domains such as fiscal policy, taxation, macroeconomic regulation, and foreign affairs.

8. TOWARDS A SYNCHRONIZED PARADIGM: JURISPRUDENTIAL RECONCILIATION

The evolution of judicial review does not demand the total annihilation of Wednesbury, but rather its principled contextual confinement. Contemporary public law is evolving towards a synchronized, context-dependent continuum of review, structured upon three distinct judicial zones:

Zone 1: Strict Proportionality (Fundamental Rights and Civil Liberties): Where state action infringes upon fundamental constitutional freedoms (Articles 14, 19, 21 of the Indian Constitution; Articles 8–11 of the ECHR; common law constitutional rights), proportionality is the mandatory standard. Courts must rigorously apply

all four prongs, demanding that the state demonstrate necessity and absence of less restrictive alternatives.

Zone 2: Deferential Proportionality / Manifest Disproportionality (Socio-Economic Policy and Complex Regulation): Where state action involves complex economic regulation, town planning, industrial licensing, or resource redistribution, courts should apply proportionality with a wide margin of administrative appreciation. The court should interrogate legitimate aim and suitability, but grant significant deference to the executive's judgment regarding necessity and policy balance.

Zone 3: Wednesbury Unreasonableness (Pure Allocative and Managerial Choices): In purely commercial, managerial, contractual, and procurement decisions (such as tender conditions in Tata Cellular), where fundamental human rights are not implicated, Wednesbury unreasonableness remains an appropriate standard of review. In this sphere, judicial intervention should remain an extraordinary exception reserved for cases of manifest bad faith, corruption, or utter absurdity.

9. CONCLUSION: THE TRIUMPH OF STRUCTURED JUSTIFICATION

The historical journey from Wednesbury unreasonableness to the proportionality test represents one of the most transformative intellectual movements in modern public law. Wednesbury served an honorable historical role during an era dominated by statutory interpretation, parliamentary supremacy, and judicial modesty. It constructed a vital institutional shield protecting courts from being overwhelmed by administrative litigation.

However, in a modern constitutional democracy governed by an ethos of human dignity, fundamental rights, and the Rule of Law, Wednesbury unreasonableness can no longer serve as the universal standard of judicial review. Its tautological phrasing and extreme deference leave fundamental rights vulnerable to executive erosion. Proportionality provides the legal system with a structured, transparent, and rigorous analytical framework that holds sovereign power accountable without destroying the separation of powers.

By shifting the focus of judicial scrutiny from the negative search for administrative madness to the positive requirement of structured democratic justification, the proportionality doctrine fulfills the highest promise of constitutionalism: that every exercise of coercive state power must justify itself before the altar of reason, necessity, and fundamental human rights.

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