

Blurred Standards of Review: The Silent Convergence of *Wednesbury* and Proportionality in Indian Administrative Law

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Abstract

Indian administrative law formally maintains a bifurcated standard of review. Following *Om Kumar v. Union of India*, proportionality governs administrative action that restricts fundamental freedoms or is challenged as discriminatory under Article 14, while *Wednesbury* unreasonableness governs action challenged as arbitrary, including the quantum of disciplinary punishment. This article asks whether that bifurcation still describes what Indian courts actually do. Adopting a normative-doctrinal method combining statutory, case, conceptual and comparative approaches, it examines the leading Supreme Court authorities on judicial review of administrative discretion alongside recent constitutional proportionality jurisprudence. It advances four findings. First, the “shockingly disproportionate punishment” standard is not a species of irrationality review but a truncated proportionality inquiry: it compares means with ends, asks implicitly whether a lesser sanction would have sufficed, and weighs the severity of the burden against the gravity of the misconduct. Second, structured proportionality adopted in constitutional adjudication has spilled into the review of executive measures, further destabilising the bifurcation. Third, the resulting indeterminacy is a rule-of-law problem, because the intensity of review comes to depend on how a challenge is pleaded rather than on any reasoned assessment of the right affected or the competence of the decision-maker. Fourth, this pattern is not peculiar to India but recurs across postcolonial and Global South jurisdictions that have received proportionality without articulating the justification for the intensity of scrutiny they apply. The article argues not for abandoning either doctrine but for calibrated review, sustained by judicial duties of characterisation, structure and justification.

KEYWORDS: *Doctrine of proportionality; Indian administrative law; Intensity of judicial review; Wednesbury unreasonableness*

Introduction

Administrative law is organised around a tension that admits of no permanent settlement. Courts must protect individuals against arbitrary exercises of public power, yet they must also respect the discretion that legislatures have deliberately conferred on administrative authorities. Standards of review are the technical devices through which legal systems manage that tension. They determine how closely a court may look at an administrative decision, what the decision-maker must be able to show, and where the burden of justification lies. A standard of review is therefore never merely a formula; it is an allocation of institutional authority between courts and administrators.¹

Two standards dominate common-law thinking about that allocation. The first, *Wednesbury* unreasonableness, permits intervention only where a decision is so unreasonable that no reasonable authority could ever have arrived at it.² The second, proportionality, requires the decision-maker to demonstrate that the measure adopted pursues a legitimate purpose, is rationally connected to that purpose, is necessary in the sense that no less restrictive alternative was available, and imposes a burden justified by the importance of the objective.³ The difference is commonly described as one of intensity. It is more accurately described as a difference in the direction of justification: *Wednesbury* asks the challenger to establish absurdity, whereas proportionality asks the State to establish reasons.⁴

India occupies an unusual position in this landscape. In *Union of India v. G. Ganayutham* the Supreme Court held that *Wednesbury* remained the governing principle for administrative action and expressly left open whether proportionality applied where fundamental rights were engaged.⁵ Three years later, *Om Kumar v. Union of India* supplied an answer in the form of a bifurcation. Where administrative action restricts the fundamental freedoms guaranteed by Articles 19 and 21, or is impugned as discriminatory under Article 14, the Court applies proportionality and acts as a primary reviewing authority, examining whether the least restrictive measure was chosen. Where administrative action is impugned as arbitrary under Article 14, including the quantum of punishment imposed in disciplinary proceedings, the Court

¹ Nuno Garoupa and Jud Mathews, "Strategic Delegation, Discretion, and Deference: Explaining the Comparative Law of Administrative Review," *American Journal of Comparative Law* 62, no. 1 (2014): 1–33, <https://doi.org/10.5131/ajcl.2013.0013>.

² *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 (CA) (England and Wales).

³ Aharon Barak, "Proportionality and Principled Balancing," *Law & Ethics of Human Rights* 4, no. 1 (2010): 1–16, <https://doi.org/10.2202/1938-2545.1041>.

⁴ Moshe Cohen-Eliya and Iddo Porat, "Proportionality and the Culture of Justification," *American Journal of Comparative Law* 59, no. 2 (2011): 463–90, <https://doi.org/10.5131/ajcl.2010.0018>.

⁵ *Union of India v. G. Ganayutham*, (1997) 7 SCC 463 (India).

applies *Wednesbury* and acts only as a secondary reviewing authority, intervening where the penalty is “shockingly disproportionate.”⁶

That formulation is elegant, but it conceals a difficulty that is visible on the face of the doctrine itself. If a court must determine whether a penalty is “shockingly disproportionate,” it must first form a view about what a proportionate penalty would be. It must compare the gravity of the misconduct with the severity of the sanction, and it can hardly avoid asking whether a lesser sanction would have served the disciplinary objective. Those are the operations of proportionality. Yet *Om Kumar* assigns them to *Wednesbury*. The doctrinal label and the analytical structure have come apart.

The tension is not merely theoretical. In *Ranjit Thakur v. Union of India* the Supreme Court held that a sentence “has to suit the offence and the offender” and must not be “so disproportionate to the offence as to shock the conscience.”⁷ In *B.C. Chaturvedi v. Union of India* the Court accepted that where a penalty is shockingly disproportionate it may mould relief and, exceptionally, substitute an appropriate punishment.⁸ In *Management of Coimbatore District Central Co-operative Bank v. Secretary, Coimbatore District Central Co-operative Bank Employees Association* the Court discussed proportionality in terms of a balancing test directed against “excessive onerous penalties” and a necessity test oriented to the least restrictive alternative, while simultaneously insisting that a writ court cannot substitute its own discretion for that of the disciplinary authority.⁹ The vocabulary of proportionality and the posture of *Wednesbury* appear in the same judgment.

Indian scholarship has engaged the proportionality question with increasing sophistication, but its centre of gravity lies elsewhere. Lee Marsons has mapped the Indian bifurcated model against the English tendency towards calibration, arguing that England has moved away from the discrete-standards approach that India retains.¹⁰ Vikram Aditya Narayan and Jahnavi Sindhu have argued that proportionality has deeper roots in Indian constitutional history than the Court’s recent adoption suggests.¹¹ Aparna Chandra has argued, in the most pointed critique to date, that the Indian Supreme Court has assimilated proportionality into its pre-existing deferential habits rather than allowing the doctrine to reshape its reasoning.¹² Shruti Bedi has

⁶ *Om Kumar v. Union of India*, (2001) 2 SCC 386 (India); reported also as AIR 2000 SC 3689.

⁷ *Ranjit Thakur v. Union of India*, (1987) 4 SCC 611 (India).

⁸ *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749 (India).

⁹ *Management of Coimbatore District Central Co-operative Bank v. Secretary, Coimbatore District Central Co-operative Bank Employees Association*, (2007) 4 SCC 669 (India).

¹⁰ Lee Marsons, “Bifurcation, Unification and Calibration: A Comparison of Indian and English Approaches to Proportionality,” *Indian Law Review* 2, no. 1 (2018): 26–50, <https://doi.org/10.1080/24730580.2018.1506250>.

¹¹ Vikram Aditya Narayan and Jahnavi Sindhu, “A Historical Argument for Proportionality under the Indian Constitution,” *Indian Law Review* 2, no. 1 (2018): 51–88, <https://doi.org/10.1080/24730580.2018.1516112>.

¹² Aparna Chandra, “Proportionality in India: A Bridge to Nowhere?,” *University of Oxford Human Rights Hub Journal* 3, no. 2 (2020): 56–86.

documented the Court's inconsistent allocation of the burden of proof within proportionality analysis.¹³ Rishika Sahgal, Navin Sinha and their respective co-authors have examined how proportionality operates across social rights adjudication and across the boundary between administrative and legislative review.¹⁴

Two gaps remain. First, this literature is overwhelmingly concerned with constitutional rights adjudication, particularly after *Justice K.S. Puttaswamy (Retd.) v. Union of India*, and pays comparatively little attention to the service-law and disciplinary strand in which the *Wednesbury* label has been most tenaciously preserved. That strand matters precisely because it is where the label and the reasoning diverge most sharply, and where the largest volume of administrative litigation is generated. Second, the existing critiques ask whether Indian courts apply proportionality properly. They do not ask the prior question of what analytical work the “shocking disproportionality” formula performs when courts disclaim proportionality altogether. The convergence has been noticed in passing; it has not been reconstructed as a distinct doctrinal phenomenon with its own causes and its own costs.

This article addresses those gaps. It asks three questions. Does the *Om Kumar* bifurcation still describe Indian judicial practice in the review of administrative discretion? What analytical operations does the “shockingly disproportionate” standard actually perform? And what normative response should follow from the answer? Its central argument is that *Wednesbury* and proportionality have converged in Indian administrative law, but that the convergence is unacknowledged, and that concealment rather than convergence is the source of the difficulty. Proportionality-type reasoning conducted under a *Wednesbury* label retains the substantive comparison of means and ends while discarding the discipline that makes proportionality valuable: explicit staging, an allocated burden of justification, and a reasoned account of why a particular intensity of scrutiny is warranted.

The contribution is threefold. Doctrinally, the article reconstructs “shocking disproportionality” as a truncated proportionality inquiry rather than a variant of irrationality, and shows how constitutional proportionality has migrated into the review of executive measures. Normatively, it identifies the pleading-dependence of the Indian standard as an arbitrariness internal to the doctrine of arbitrariness. Comparatively, it situates the Indian pattern within a wider Global South phenomenon in which received standards of review are applied without an articulated theory of intensity, drawing illustrative support from Hong Kong, South Africa, Indonesia, Kenya and Nigeria.

¹³ Shruti Bedi, “Proportionality and Burden of Proof: Constitutional Review in India,” *Indian Journal of Constitutional Law* 10 (2021).

¹⁴ Rishika Sahgal, “Proportionality Review and Economic and Social Rights in India,” *Indian Law Review* 8, no. 2 (2024): 207–29, <https://doi.org/10.1080/24730580.2024.2368686>; Navin Sinha and Fakkires S. Sakkarnaikar, “The Different Facets of the Proportionality Principle as Applied by the Supreme Court in India,” *Constitutional Political Economy* 35, no. 1 (2024): 22–44, <https://doi.org/10.1007/s10602-023-09399-9>.

The article proceeds as follows. After setting out the method, it reconstructs the formal architecture of the two standards and the Indian bifurcation; analyses the “shocking disproportionality” cases and defends the claim that they perform proportionality reasoning; examines the spillover of constitutional proportionality into administrative review; explains why the convergence matters; and develops the case for calibrated review, situating the argument comparatively before concluding.

Method

This article employs normative or doctrinal legal research. Its object is the internal logic of a body of judicial reasoning: what standards Indian courts say they are applying, what operations they in fact perform, and whether the two correspond. The inquiry is analytical rather than empirical. It does not code a dataset of decisions or make claims about the frequency with which particular outcomes occur; its claims concern doctrinal structure and the quality of judicial justification.

Four approaches are combined. The statutory approach examines the constitutional provisions that frame the Indian standard of review, principally Articles 14, 19 and 21 of the Constitution of India together with the writ jurisdictions conferred by Articles 32 and 226. The case approach examines the leading decisions of the Supreme Court of India on judicial review of administrative discretion between 1987 and 2020, selected because each either establishes, restates or destabilises the *Wednesbury*–proportionality boundary: *Ranjit Thakur*, *B.C. Chaturvedi*, *Tata Cellular*, *G. Ganayutham*, *Om Kumar*, *Coimbatore District Central Co-operative Bank*, *Modern Dental College and Research Centre*, *Puttaswamy* and *Anuradha Bhasin*. The conceptual approach analyses the doctrinal concepts on which those decisions depend, namely unreasonableness, irrationality, proportionality, deference, intensity of review and the culture of justification. The comparative approach draws illustratively on English, Hong Kong, Australian, South African, Indonesian, Kenyan and Nigerian material.

The comparative element requires a caveat. This article does not undertake a systematic comparative study of any of those jurisdictions. Comparative material is used for a narrower purpose: to show that the Indian difficulty is structural rather than idiosyncratic, and to identify techniques by which other courts have made the intensity of their review explicit. Two further limitations should be stated. First, English decisions after the Human Rights Act 1998 arise in a statutory framework that India does not share, so English developments inform the Indian analysis by analogy only. Second, primary materials have been consulted through reported citations and, where indicated, secondary accounts; bibliographic details that could not be independently confirmed are flagged in the notes.

The Formal Architecture: Two Standards and Two Judicial Roles

Wednesbury and the Logic of Deference

The *Wednesbury* standard is conventionally presented as the paradigm of deferential review. Lord Greene MR's formulation confines intervention to decisions "so unreasonable that no reasonable authority could ever have come to" them, a threshold he glossed as requiring something "so absurd that no sensible person could ever dream that it lay within the powers of the authority."¹⁵ In *Council of Civil Service Unions v Minister for the Civil Service*, Lord Diplock recast the test as "irrationality," describing it as a decision "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," while noting the possible future adoption of proportionality as a distinct ground.¹⁶

Indian courts received that framework substantially intact. In *Tata Cellular v. Union of India* the Supreme Court held that judicial review is directed at the decision-making process rather than the decision, and that the court's duty is "to confine itself to the question of legality," asking whether the authority exceeded its powers, erred in law, breached natural justice, reached a decision no reasonable tribunal would have reached, or abused its power.¹⁷ The rationale is institutional. Administrative authorities possess expertise, information and democratic mandate that courts lack; a court that intervenes merely because it prefers another outcome substitutes its judgment for a judgment the law assigned elsewhere.

It is a mistake, however, to treat *Wednesbury* as a single fixed threshold. Adam Perry's recent reconstruction demonstrates that the test has been understood at different times as a test of absurdity, of the balance of reasons, and of the weight attributed to relevant considerations, and that these are not equivalent.¹⁸ English practice developed the technique of "anxious scrutiny," under which the intensity of unreasonableness review rises with the importance of the interest at stake, without any formal change of standard.¹⁹ Paul Craig has argued more strongly that reasonableness review already contains a form of balancing, since a court that assesses the weight given to competing considerations is doing precisely what proportionality's final stage

¹⁵ *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223, 229–34 (CA).

¹⁶ *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, 410 (HL) (United Kingdom).

¹⁷ *Tata Cellular v. Union of India*, (1994) 6 SCC 651 (India).

¹⁸ Adam Perry, "Wednesbury Unreasonableness," Cambridge Law Journal 82, no. 3 (2023): 483–508, <https://doi.org/10.1017/s0008197323000223>.

¹⁹ Michael Fordham, "What Is 'Anxious Scrutiny'?", Judicial Review 1, no. 2 (1996): 81–87, <https://doi.org/10.1080/10854681.1996.11426869>.

requires.²⁰ *Wednesbury* is thus better understood as a range of intensities than as a single point on a scale, a point that will prove central to the argument developed below.²¹

Proportionality and the Logic of Justification

Proportionality proceeds differently. In its now-standard four-stage form it asks whether the measure pursues a proper purpose, whether the means adopted are rationally connected to that purpose, whether no less restrictive means were available, and whether the benefit secured justifies the burden imposed.²² India adopted that formulation in *Modern Dental College and Research Centre v. State of Madhya Pradesh*, where a Constitution Bench expressly took over Barak's four limbs.²³

The distinguishing feature of proportionality is not that it produces stricter outcomes but that it reallocates the burden of explanation. Under *Wednesbury* the challenger must establish that the decision falls outside the range of the defensible; under proportionality the State must show that its chosen means survive each stage. This is what Moshe Cohen-Eliya and Iddo Porat describe as the shift from a culture of authority to a culture of justification, in which the legitimacy of state action depends on the reasons that can be given for it rather than on the formal existence of power.²⁴ Mattias Kumm's account of proportionality as institutionalised Socratic contestation makes the same point in a different register: the value of the doctrine lies in the demand that public authority explain itself.²⁵

The doctrine is not without serious critics. Stavros Tsakyrakis has argued that balancing disguises moral reasoning as quasi-scientific measurement and that incommensurable interests cannot meaningfully be weighed.²⁶ Madhav Khosla's reply, and Kai Möller's broader defence, maintain that the objection misdescribes what courts do and that structured reasoning is preferable to unstructured intuition.²⁷ That

²⁰ Paul Craig, "The Nature of Reasonableness Review," *Current Legal Problems* 66, no. 1 (2013): 131–67, <https://doi.org/10.1093/clp/cut010>. For a parallel analysis situating the two principles within administrative rather than constitutional review, see Filippo Borriello, "Principle of Proportionality and the Principle of Reasonableness," *Review of European Administrative Law* 13, no. 2 (2020): 155–74, <https://doi.org/10.7590/187479820x15930701852292>.

²¹ Julian Rivers, "Proportionality and Variable Intensity of Review," *Cambridge Law Journal* 65, no. 1 (2006): 174–207, <https://doi.org/10.1017/S0008197306007082>.

²² Barak, "Proportionality and Principled Balancing," 1–16.

²³ *Modern Dental College and Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353 (India).

²⁴ Cohen-Eliya and Porat, "Proportionality and the Culture of Justification," 463–90.

²⁵ Mattias Kumm, "The Idea of Socratic Contestation and the Right to Justification: The Point of Rights-Based Proportionality Review," *Law & Ethics of Human Rights* 4, no. 2 (2010): 142–75, <https://doi.org/10.2202/1938-2545.1047>.

²⁶ Stavros Tsakyrakis, "Proportionality: An Assault on Human Rights?," *International Journal of Constitutional Law* 7, no. 3 (2009): 468–93, <https://doi.org/10.1093/icon/mop011>.

²⁷ Madhav Khosla, "Proportionality: An Assault on Human Rights?: A Reply," *International Journal of Constitutional Law* 8, no. 2 (2010): 298–306, <https://doi.org/10.1093/icon/moq002>; Kai Möller, "Proportionality: Challenging the Critics," *International Journal of Constitutional Law* 10, no. 3 (2012): 709–31, <https://doi.org/10.1093/icon/mos024>.

exchange matters here because it clarifies what is at stake in the Indian problem. If proportionality's value lies in structured public justification, then a court that performs proportionality's substantive comparison without its structure secures none of the doctrine's benefits while incurring all of its costs. Empirical and analytical work confirms that the stage on which a court concentrates is itself outcome-relevant: Virgílio Afonso da Silva has shown that necessity, rather than balancing, does most of the real work in proportionality reasoning, so that a court which suppresses the necessity stage suppresses the analytically decisive part of the inquiry.²⁸ Which stage a court runs, and whether it runs it openly, is therefore not a matter of drafting style.

The Indian Bifurcation and the Allocation of Judicial Role

Against that background, *Om Kumar's* contribution was to convert a question about tests into a question about roles. Where fundamental freedoms or Article 14 discrimination are engaged, the Court acts as a primary reviewing authority and may ask whether “the appropriate or least restrictive choice of measures” was made and whether the measure is excessive in relation to its objective. Where the complaint is one of arbitrariness, including in the quantum of punishment, the Court acts as a secondary reviewing authority and asks only whether the decision was one a reasonable authority could have reached.²⁹ The distinction thus determines not only the closeness of the examination but the constitutional character of the court's intervention.

Two features of that settlement deserve emphasis. First, it is a categorical rather than a graduated allocation: a case falls on one side of the line or the other, and the standard follows automatically from the classification. Second, the classification turns on the constitutional provision invoked rather than on the severity of the burden imposed on the individual. As Marsons observes, this bifurcated architecture is precisely what English law has been abandoning in favour of a calibrated approach in which intensity varies continuously with context.³⁰ Rajan Varghese, writing shortly before the constitutional turn, had already questioned whether *Wednesbury* could retain independent significance in India once proportionality was available.³¹ The question this article pursues is narrower and, it is suggested, more revealing: not whether *Wednesbury* should survive, but what Indian courts are actually doing when they say they are applying it.

²⁸ Virgílio Afonso da Silva, “Standing in the Shadows of Balancing: Proportionality and the Necessity Test,” *International Journal of Constitutional Law* 20, no. 5 (2022): 1738–67, <https://doi.org/10.1093/icon/moac105>.

²⁹ *Om Kumar v. Union of India*, (2001) 2 SCC 386.

³⁰ Marsons, “Bifurcation, Unification and Calibration,” 26–50.

³¹ Rajan Varghese, “The Relevance of ‘*Wednesbury* Unreasonableness’ in the Light of ‘Proportionality’ as a Ground for Judicial Review,” *Indian Journal of Public Administration* 60, no. 1 (2014): 88–104, <https://doi.org/10.1177/0019556120140106>.

Shocking Disproportionality as Concealed Proportionality

The clearest evidence of convergence lies in the line of authority on judicial review of disciplinary punishment. That line is significant not because it is doctrinally exotic but because it is doctrinally ordinary: it generates a very large share of Indian administrative litigation, and it is the domain in which the *Wednesbury* label has been most firmly retained.

1. The Emergence of the Standard

In *Ranjit Thakur v. Union of India* the Supreme Court reviewed the sentence imposed by a court-martial on an army officer. The Court accepted that the choice and quantum of punishment lie within the discretion of the court-martial, but held that “the sentence has to suit the offence and the offender,” that it “should not be vindictive or unduly harsh,” and that it “should not be so disproportionate to the offence as to shock the conscience.”³² The reasoning is explicitly comparative. The Court did not ask whether the punishing authority had taken leave of its senses; it placed the misconduct and the sanction side by side and assessed the fit between them. *B.C. Chaturvedi v. Union of India* carried the standard into civil service discipline, holding that where the penalty is shockingly disproportionate the reviewing court may direct reconsideration and, in rare cases, itself substitute an appropriate penalty for cogent reasons.³³

Om Kumar then classified this body of law. Reviewing punishments challenged as arbitrary under Article 14, the Court held that it acts as a secondary reviewing authority applying *Wednesbury*, and that “shocking disproportionality” marks the threshold of intervention within that standard.³⁴ The classification is doctrinally consequential: it denies that the Court is engaged in proportionality even while it retains proportionality's vocabulary.

2. What the Standard Actually Requires

Three analytical operations are embedded in the shocking-disproportionality inquiry, and each belongs to proportionality rather than to irrationality review.

The first is a means–ends comparison. Disciplinary punishment pursues identifiable objectives: maintaining discipline, deterring repetition, preserving institutional integrity, and, where dismissal is in issue, protecting the employer from continuing risk. To ask whether a penalty is disproportionate to the misconduct is to ask whether the sanction is commensurate with those objectives. That is the inquiry proportionality's first two stages perform.

The second is an implicit necessity assessment. A court that finds dismissal excessive for a minor infraction has necessarily concluded that a lesser sanction would have achieved the disciplinary objective. *B.C. Chaturvedi*'s remedial technique makes this explicit: remitting the matter for reconsideration of penalty presupposes that a less

³² *Ranjit Thakur v. Union of India*, (1987) 4 SCC 611.

³³ *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749.

³⁴ *Om Kumar v. Union of India*, (2001) 2 SCC 386.

restrictive sanction was available and adequate.³⁵ This is the necessity stage, which as Afonso da Silva has shown carries most of proportionality's analytical load.³⁶

The third is balancing in the strict sense. The language of a penalty that “shocks the conscience” expresses a judgment that the burden imposed on the individual outweighs the institutional benefit secured. That is a weighing of competing interests, however intuitively conducted, and it is the operation that proportionality's fourth stage isolates and requires to be performed openly.

Coimbatore District Central Co-operative Bank illustrates the resulting incoherence with unusual clarity. The Court there articulated proportionality in terms of a balancing component directed against excessive and onerous penalties and a necessity component oriented to the least restrictive alternative, and then held that a writ court “cannot substitute the discretionary powers that have been given to administrative bodies by its own decision,” concluding that the penalty was not excessive, harsh or disproportionate.³⁷ The Court thus deployed proportionality's analytical apparatus to reach a conclusion it characterised as an exercise of deference. What is missing is not the reasoning but the account of the reasoning.

3. Doctrinal Instability and a Counter-Argument Considered

That the boundary is unstable is confirmed by the Court's own oscillation. In *State of U.P. v. Sheo Shanker Lal Srivastava* the Supreme Court observed that the doctrine of unreasonableness was giving way to the doctrine of proportionality and suggested that *Wednesbury* principles “may not now be held to be applicable” in light of constitutional developments.³⁸ That dictum cannot be reconciled with *Om Kumar*, and its subsequent marginalisation is itself instructive: the Court has neither followed it nor explained why it was wrong.

An objection must be addressed. It may be said that the shocking-disproportionality threshold is set so high that the standard is simply irrationality expressed in the idiom of severity, and that a court which intervenes only in extreme cases is not conducting proportionality review at all. The objection conflates two distinct variables. The threshold determines when a court will intervene; the analytical structure determines what the court reasons about. A demanding threshold applied to a proportionality-type question yields low-intensity proportionality review, not *Wednesbury* review. This is precisely the insight of Julian Rivers's account of variable intensity as a variable internal to proportionality rather than an alternative to it, and of

³⁵ *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749.

³⁶ Afonso da Silva, “Standing in the Shadows of Balancing,” 1738–67.

³⁷ *Management of Coimbatore District Central Co-operative Bank v. Secretary, Coimbatore District Central Co-operative Bank Employees Association*, (2007) 4 SCC 669.

³⁸ *State of U.P. v. Sheo Shanker Lal Srivastava*, (2006) 3 SCC 276 (India). The dictum sits uneasily with *Om Kumar* and has generally been treated as an outlier; it is cited here as evidence of doctrinal instability rather than as settled authority.

Craig's argument that balancing is already immanent in reasonableness.³⁹ Yossi Nehushtan's contrary position, that reasonableness and proportionality differ in kind rather than degree, sharpens rather than defeats the point: if the two are genuinely different in kind, then a court performing means–ends and necessity reasoning has crossed into proportionality regardless of the label it uses.⁴⁰

The conclusion of this section is therefore narrow but firm. Indian courts reviewing disciplinary punishment perform the substantive operations of proportionality. What they omit is proportionality's discipline: they do not stage the inquiry, they do not allocate the burden of justification to the administrative authority, and they do not explain why the intensity of scrutiny they have chosen is the appropriate one. Bedi's finding that the Indian Court allocates the burden of proof inconsistently even in avowed proportionality cases suggests that this omission is a general feature of Indian practice rather than a peculiarity of service law.⁴¹

Constitutional Spillover and the Destabilisation of the Bifurcation

If the first source of convergence is the covert proportionality embedded in *Wednesbury* review, the second runs in the opposite direction. Structured proportionality, adopted in the constitutional domain, has migrated into the review of executive and administrative measures, eroding the bifurcation from the other side.

The sequence is familiar. *Modern Dental College* adopted Barak's four-stage test for limitations on constitutional rights.⁴² The nine-judge Bench in *Justice K.S. Puttaswamy (Retd.) v. Union of India* required that any intrusion upon privacy satisfy legality, legitimate aim and proportionality of means to ends.⁴³ The Aadhaar Bench applied the four-stage test in terms.⁴⁴

Anuradha Bhasin v. Union of India is the pivotal decision for present purposes. The Court there held that proportionality “is an essential facet of the guarantee against arbitrary State action,” required the authorities to consider “the existence of any alternative mechanism,” and directed that the least intrusive measure be adopted.⁴⁵ What was under review was not legislation but executive orders restricting internet access and movement. Structured proportionality, including an explicit necessity requirement and a burden placed on the State, was thus applied directly to administrative action.

³⁹ Rivers, “Proportionality and Variable Intensity of Review,” 174–207; Craig, “The Nature of Reasonableness Review,” 131–67.

⁴⁰ Yossi Nehushtan, “The Non-Identical Twins in UK Public Law: Reasonableness and Proportionality,” *Israel Law Review* 50, no. 1 (2017): 69–86, <https://doi.org/10.1017/s0021223716000261>.

⁴¹ Bedi, “Proportionality and Burden of Proof.”

⁴² *Modern Dental College and Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.

⁴³ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).

⁴⁴ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2019) 1 SCC 1 (India) (decided 26 September 2018).

⁴⁵ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637 (India).

That result is formally consistent with *Om Kumar*, since Article 19 freedoms were engaged. But its implications are corrosive. It demonstrates that Indian courts are institutionally capable of running structured proportionality against executive measures, and that the reasons ordinarily given for withholding such scrutiny in administrative cases—institutional competence, the absence of a judicially manageable standard, the danger of substitution—are not insuperable. The bifurcation is consequently sustained by classification alone. Whether an individual receives structured, State-justified review or deferential, challenger-burdened review depends on which constitutional provision the pleading invokes, not on the weight of the burden imposed. Critical commentary on *Anuradha Bhasin* has noted that even in that case the Court's application of the test was less rigorous than its statement of it, which underscores the wider point that adopting proportionality's vocabulary does not guarantee proportionality's discipline.⁴⁶

A parallel mechanism operates through the constitutionalisation of administrative law grounds. Raeesa Vakil has shown how the Indian Supreme Court has absorbed administrative-law doctrines such as natural justice into the fundamental rights framework, with the result that ordinary administrative illegality is increasingly litigated as constitutional violation.⁴⁷ The same movement affects the standard of review. Once arbitrariness under Article 14 is itself a constitutional ground, the supposedly non-constitutional space in which *Wednesbury* governs contracts steadily. Navin Sinha and Fakkiresh Sakkarnaikar's account of proportionality's expansion from administrative into legislative review describes the same doctrinal traffic from the other direction, and Sinha and Mitul Dutta have recently argued for recognising proportionality as a general head of rights review in India.⁴⁸

Aparna Chandra's diagnosis and the argument of this article are complementary rather than competing. Chandra contends that the Indian Court has assimilated proportionality into its pre-existing deferential practice, so that adopting the doctrine changed the vocabulary more than the reasoning.⁴⁹ The present analysis identifies the reciprocal movement: proportionality-type reasoning has also been assimilated into *Wednesbury* vocabulary. Both are symptoms of a single underlying condition, which is that the Court does not articulate a theory of intensity. Without such a theory,

⁴⁶ Devdutta Mukhopadhyay and Apar Gupta, "Jammu & Kashmir Internet Restrictions Cases: A Missed Opportunity to Redefine Fundamental Rights in the Digital Age," *Indian Journal of Constitutional Law* 9 (2020): 207.

⁴⁷ Raeesa Vakil, "Constitutionalizing Administrative Law in the Indian Supreme Court: Natural Justice and Fundamental Rights," *International Journal of Constitutional Law* 16, no. 2 (2018): 475–502, <https://doi.org/10.1093/icon/moy027>.

⁴⁸ Sinha and Sakkarnaikar, "The Different Facets of the Proportionality Principle," 22–44; Navin Sinha and Mitul Dutta, "Theorising a Place for Proportionality Principle as a General Head of Review for Fundamental Rights Review in India," *Liverpool Law Review* 46, no. 2 (2025): 161–79, <https://doi.org/10.1007/s10991-025-09381-5>.

⁴⁹ Chandra, "Proportionality in India," 56–86.

doctrinal labels float free of the reasoning they are supposed to describe, and can travel in either direction.

Why the Convergence Matters

1. Predictability and the Position of Litigants

The most immediate cost is practical. The standard of review shapes what evidence must be assembled, what reasons an administrator must record, and what an adviser can responsibly predict. A challenger who expects proportionality will prepare material on less restrictive alternatives; a challenger who expects *Wednesbury* will concentrate on demonstrating that relevant considerations were ignored. Where courts perform proportionality reasoning while professing *Wednesbury*, neither party can know in advance which case to build. Administrative authorities face a mirror-image difficulty: they cannot know whether a record that establishes rationality will suffice, or whether they must also demonstrate that no lesser measure was available.

2. The Justificatory Deficit

The deeper cost concerns judicial reasoning itself. If proportionality's value lies in compelling public justification, then conducting proportionality's substantive comparison without its structure forfeits the benefit while retaining the intrusion. A court that quashes a penalty as “shocking” has intervened in an administrative judgment on the basis of a weighing exercise it has not disclosed. The affected authority is told that its decision was excessive, but not by reference to what standard, on whom the burden lay, or what lesser measure would have been acceptable. Daniel Wang's account of *Wednesbury*'s evolution into a standard of accountability for reasonableness describes the alternative path: unreasonableness review can be made justificatory, but only if courts are explicit about what they require.⁵⁰

3. Deference Without Reasons

Nothing in this argument entails that deference is illegitimate. Administrative authorities frequently possess expertise, institutional memory and democratic authorisation that courts lack, and disciplinary bodies in particular are better placed than reviewing courts to assess the effect of misconduct on institutional morale. The objection is not to deference but to unreasoned deference. Cora Chan's work on measuring deference and on the devices through which courts express it establishes that deference is capable of being disaggregated and defended: it can be justified by reference to institutional competence, democratic legitimacy or epistemic advantage, and its degree can be stated.⁵¹ Indian constitutional scholarship has begun to engage that

⁵⁰ Daniel Wei L. Wang, “From *Wednesbury* Unreasonableness to Accountability for Reasonableness,” *Cambridge Law Journal* 76, no. 3 (2017): 642–70, <https://doi.org/10.1017/s0008197317000617>.

⁵¹ Cora Chan, “A Preliminary Framework for Measuring Deference in Rights Reasoning,” *International Journal of Constitutional Law* 14, no. 4 (2016): 851–82, <https://doi.org/10.1093/icon/mow058>; Cora Chan, *Deference in Human Rights Adjudication* (Oxford: Oxford University Press, 2024), <https://doi.org/10.1093/9780198921677.001.0001>.

framework directly, which suggests that the resources for a reasoned Indian theory of deference are available.⁵² Indian doctrine currently attaches deference to a classification rather than to any of those grounds.

4. Arbitrariness Within the Doctrine of Arbitrariness

This yields the article's sharpest normative claim. Under *Om Kumar*, the standard applied depends on the constitutional characterisation of the challenge rather than on the severity of the burden borne by the individual. Consider two public servants dismissed on identical facts. If one frames the challenge as discrimination under Article 14, the Court reviews as a primary authority and asks whether a less restrictive penalty was available. If the other frames the challenge as arbitrariness under the same Article, the Court reviews as a secondary authority and asks only whether the penalty shocks the conscience. The burden imposed is identical; the scrutiny is not. A doctrine designed to control arbitrary state action thus distributes its own protection on a basis unrelated to the interests it exists to protect. Tarunabh Khaitan's earlier argument that reasonableness is an inadequate standard for rights infringement, and that structured review is required, anticipated this difficulty in the constitutional context; it applies with equal force to administrative review.⁵³

Calibrated Review and the Global South Dimension

1. From Bifurcation to Calibration

The remedy proposed here is not the abolition of either doctrine. *Wednesbury* performs a genuine function in protecting the space within which administrators may reasonably disagree with courts, and proportionality performs a genuine function in requiring justification where serious burdens are imposed. The remedy is to replace categorical allocation with calibration: to treat intensity as a continuous variable, determined by reasons the court states, rather than as a consequence that follows automatically from classification. Marsons identifies calibration as the direction of English development, and Andrew Le Sueur's earlier account of the "rise and ruin" of unreasonableness charts the same trajectory.⁵⁴ Gráinne de Búrca's foundational analysis of the influence of proportionality on English law shows that the convergence question is now more than a quarter of a century old.⁵⁵

⁵² Arun K. Thiruvengadam and Kedar Manoj Ammanji, "Defending Deference: Review of Cora Chan's *Deference in Human Rights Adjudication* (OUP 2024)," *Comparative Constitutional Studies* (2026): 1–8, <https://doi.org/10.4337/ccs.2026.0067>.

⁵³ Tarunabh Khaitan, "Beyond Reasonableness—A Rigorous Standard of Review for Article 15 Infringement," *Journal of the Indian Law Institute* 50, no. 2 (2008): 177–208.

⁵⁴ Marsons, "Bifurcation, Unification and Calibration," 26–50; Andrew Le Sueur, "The Rise and Ruin of Unreasonableness?," *Judicial Review* 10, no. 1 (2005): 32–51, <https://doi.org/10.1080/10854681.2005.11426414>.

⁵⁵ Gráinne de Búrca, "Proportionality and *Wednesbury* Unreasonableness: The Influence of European Legal Concepts on UK Law," *European Public Law* 3, no. 4 (1997): 561–86, <https://doi.org/10.54648/euro1997052>.

Calibration would impose three duties on reviewing courts. The first is a duty of characterisation: to state which standard is being applied, and to acknowledge candidly when the reasoning employed is proportionality reasoning. The second is a duty of structure: where necessity or balancing considerations enter the analysis, to run them openly and to state where the burden of justification lies. The third, and most important, is a duty of justification of intensity: to explain why the chosen degree of scrutiny is appropriate by reference to the significance of the interest affected, the severity of the burden imposed, and the institutional competence of the decision-maker. None of these duties requires India to abandon *Wednesbury*. Each requires only that the Court say what it is doing and why.

2. Comparative Illustrations

Other jurisdictions demonstrate that these duties are workable. Hong Kong's courts have developed "anxious scrutiny" as an articulated technique for intensifying review within an unreasonableness framework, and have debated openly whether *Wednesbury* retains a future in substantive review; Michael Ramsden's studies show intensification being reasoned rather than concealed.⁵⁶ Australian scholarship has debated whether proportionality is already contained within legal reasonableness, and whether deference should be doctrinally acknowledged rather than practised silently.⁵⁷ South African administrative law has been reconstructed around competing legality, rationality and reasonableness pathways, with sustained attention to which pathway applies and why.⁵⁸

The Global South comparison is instructive in a different way, because it shows that India's difficulty is a shared one. Niels Petersen's study of the South African Constitutional Court found that the Court frequently invokes balancing while deciding on other grounds, so that the doctrine's stated structure and its operative reasoning diverge.⁵⁹ Studies of the Indonesian Constitutional Court report the restriction of rights without any articulated proportionality test, alongside a conflation of limitation and derogation.⁶⁰ Harrison Otieno Mbori's analysis of a recent Kenyan

⁵⁶ Michael Ramsden, "The Future of *Wednesbury* Unreasonableness in the Substantive Review of Administrative Discretion: A Hong Kong Perspective," *Chinese Journal of Comparative Law* 9, no. 1 (2020): 51–80, <https://doi.org/10.1093/cjcl/cxaa033>; Michael Ramsden, "Anxious Scrutiny in Hong Kong Administrative Law: Origins, Adaptations, and Techniques," *Asian Journal of Comparative Law* 19, no. 2 (2024): 348–68, <https://doi.org/10.1017/asjcl.2024.6>.

⁵⁷ Janina Boughey, "The Reasonableness of Proportionality in the Australian Administrative Law Context," *Federal Law Review* 43, no. 1 (2015): 59–90, <https://doi.org/10.1177/0067205x1504300103>.

⁵⁸ Cora Hoexter and Glenn Penfold, "The Remaking of South African Administrative Law," *Journal of African Law* 68, no. 2 (2024): 215–30, <https://doi.org/10.1017/S0021855324000020>.

⁵⁹ Niels Petersen, "Proportionality and the Incommensurability Challenge in the Jurisprudence of the South African Constitutional Court," *South African Journal on Human Rights* 30, no. 3 (2014): 405–29, <https://doi.org/10.1080/19962126.2014.11865116>.

⁶⁰ Stefanus Hendrianto, "Against the Currents: The Indonesian Constitutional Court in an Age of Proportionality," in *Proportionality in Asia*, ed. Po Jen Yap (Cambridge: Cambridge University Press,

Supreme Court decision describes proportionality applied “on the lite,” invoked in name while its stages go unperformed. Recent European scholarship makes the corresponding point in principle: invoking proportionality without performing its stages is not a lighter version of the doctrine but a different exercise altogether.^{61,62} Basil Ugochukwu’s assessment of the transplantability of balancing to Nigeria raises the same concern about reception without institutional adaptation.⁶³

Two general lessons follow. The first is Mark Tushnet’s sceptical observation that “proportionality” may not name a single doctrine at all, but a family of practices whose content varies with the institutional setting that receives it.⁶⁴ If so, the label carries little information, and what a court owes its audience is an account of the reasoning rather than the name of a test. The second is that structure does not entail intrusiveness. Rehan Abeyratne’s study of Hong Kong finds that more structured proportionality analysis has produced more, not less, deference, because structure gives courts a principled vocabulary in which to defer.⁶⁵ This answers the most likely objection to the proposal advanced here, namely that requiring courts to reason openly about intensity would over-judicialise Indian service law. Calibration can justify low intensity as readily as high; what it forbids is intensity without reasons.

3. Situating the Indian Problem

There is a further reason for reading the Indian pattern through a Global South lens. Standards of review are among the most portable artefacts of the common-law tradition, and *Wednesbury* travelled through the Commonwealth as part of a colonial inheritance rather than as the product of local constitutional deliberation. Postcolonial constitutional orders then layered proportionality, drawn from continental and international human rights practice, on top of that inheritance. Garoupa and Mathews’s comparative account of why systems adopt different review standards suggests that such layering is stable only where the receiving system develops its own account of when each standard applies.⁶⁶ India has received both standards and articulated neither’s rationale in institutional terms. The resulting doctrine is not a

2020), 169–91; Eko Riyadi, Satya Arinanto, Simon Butt, and Fitra Arsil, “Ungerminated Seed: Proportionality Test in the Indonesian Constitutional Court,” *Padjadjaran Jurnal Ilmu Hukum* 12, no. 2 (2025).

⁶¹ Marek Antoš and Filip Horák, “Proportionality Means Proportionality,” *European Constitutional Law Review* 17, no. 3 (2021): 538–52, <https://doi.org/10.1017/s1574019621000328>.

⁶² Harrison Otieno Mbori, “Proportionality on the ‘Lite’: The Kenyan Supreme Court’s Fatalism in the Fatma Athman Abud (FAAF) Case,” *Kabarak Law Review* 4 (2025): 246–65.

⁶³ Basil Ugochukwu, “Balancing, Proportionality, and Human Rights Adjudication in Comparative Context: Lessons for Nigeria,” *Transnational Human Rights Review* 1, no. 1 (2014): 1–58, <https://doi.org/10.60082/2563-4631.1000>.

⁶⁴ Mark Tushnet, “Is There a Doctrine of *Proportionality in Asia* (or Anywhere)?,” in *Proportionality in Asia*, ed. Po Jen Yap (Cambridge: Cambridge University Press, 2020), 269–83.

⁶⁵ Rehan Abeyratne, “More Structure, More Deference: Proportionality in Hong Kong,” in *Proportionality in Asia*, ed. Po Jen Yap (Cambridge: Cambridge University Press, 2020), 25–59.

⁶⁶ Garoupa and Mathews, “Strategic Delegation, Discretion, and Deference,” 1–33.

synthesis but a sedimentation. Recognising this reframes the problem: it is not a failure of judicial technique but an unfinished task of constitutional self-definition, and it is one that Indian courts share with their counterparts across the Global South.

Conclusion

This article asked whether the bifurcation established in *Om Kumar* still describes what Indian courts do when they review administrative discretion, what analytical work the “shockingly disproportionate” standard performs, and what should follow.

The answer to the first question is that it does not. Indian administrative law maintains a formal separation between *Wednesbury* and proportionality that its own case law no longer sustains. Convergence has occurred from both directions: proportionality-type reasoning is conducted under a *Wednesbury* label in the review of disciplinary punishment, while structured proportionality has been applied directly to executive measures in the constitutional case law. The doctrinal map and the judicial terrain have ceased to correspond.

The answer to the second question is that “shocking disproportionality” is not a species of irrationality review. It requires a comparison of means with ends, an implicit judgment that a lesser sanction would have sufficed, and a weighing of individual burden against institutional benefit. Those are proportionality’s operations. What the standard omits is proportionality’s discipline: staged analysis, an allocated burden of justification, and a stated rationale for the intensity of scrutiny applied. It is proportionality’s substance without proportionality’s transparency, which is the least defensible of the available combinations.

The answer to the third question is that the appropriate response is calibration rather than replacement. Courts should state which standard they apply, run necessity and balancing reasoning openly when they employ it, and justify the intensity they adopt by reference to the interest affected, the severity of the burden and the competence of the decision-maker. Those duties preserve deference where deference is warranted while ending deference by default.

The significance of these findings extends beyond doctrinal tidiness. A standard of review is a statement about the terms on which public power must justify itself. Where the standard is determined by the label attached to a pleading rather than by the burden imposed on a person, the doctrine of arbitrariness reproduces the arbitrariness it exists to control. That is a rule-of-law defect, not a drafting inelegance. It is also, as the comparative material indicates, a characteristic difficulty of legal systems that have inherited review standards from elsewhere and have not yet articulated the institutional theory that would make them coherent. The convergence of *Wednesbury* and proportionality in India is best understood not as a doctrinal accident to be corrected, but as an invitation to complete that unfinished work.

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