

# Evolution of the Doctrine of Proportionality: Assessing its Scope and Ambit in Relation to the Right to Privacy in India

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## Abstract

The doctrine of proportionality is a legal principle that aims to balance competing interests in situations where fundamental rights are at stake. In India, the right to privacy is a fundamental right that has been recognized by the Supreme Court. The scope and ambit of the doctrine of proportionality with respect to the right to privacy in India are vast and complex. The doctrine of proportionality requires that any infringement on the right to privacy be proportionate to the legitimate aim sought to be achieved by the state. The state must demonstrate that the infringement is necessary and proportionate to the legitimate aim sought to be achieved. The doctrine also requires that the least intrusive means be used to achieve the legitimate aim. In India, the scope of the doctrine of proportionality with respect to the right to privacy has been expanded by the Supreme Court in recent years. The Supreme Court has recognized that the right to privacy is not an absolute right and may be subject to reasonable restrictions. However, any restrictions imposed on the right to privacy must be proportionate and must not be excessive. The ambit of the doctrine of proportionality with respect to the right to privacy in India extends to various aspects of modern life, including surveillance, data protection, and online privacy. The Supreme Court has recognized that the right to privacy extends to informational privacy, which includes the protection of personal data. Overall, the doctrine of proportionality plays a critical role in balancing the competing interests of the state and individuals with respect to the right to privacy in India. It requires the state to demonstrate that any infringement on the right to privacy is necessary and proportionate to the legitimate aim sought to be achieved.

**Keywords:** Fundamental rights; Right to privacy; Doctrine of proportionality.

## INTRODUCTION

The right to privacy is a fundamental right that has been recognized by the Constitution of India and the Indian judiciary. However, the exercise of this right is not absolute and may be subject to reasonable restrictions. In situations where the state seeks to infringe upon the right to privacy, the doctrine of proportionality plays a

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crucial role in ensuring that such infringement is necessary and proportionate to the legitimate aim sought to be achieved.<sup>1</sup> This abstract explores the scope and ambit of the doctrine of proportionality with respect to the right to privacy in India, including its expansion by the Supreme Court in recent years and its application to various aspects of modern life, such as surveillance, data protection, and online privacy. The Doctrine of Proportionality can be seen as one of the most important tools in constitutional rights law around the world.<sup>2</sup> The proportionality test is really about the resolution of a conflict between a right and a competing right or interest, and this conflict is ultimately resolved at the balancing stage.<sup>3</sup> The courts of law in India have also given due recognition and application to the same. Recently, the said doctrine has gained immense relevance in the contemporary Indian Legal Scenario, with the Apex Court of the country incorporating it as a relevant test for determining the legitimacy of acts of encroachment by the state on the privacy of individuals while simultaneously declaring Right to Privacy as a fundamental right protected under Article 21<sup>4</sup>, along with Part III of the Constitution in general, in the landmark *J. Puttaswamy Case*.<sup>5</sup>

While it is clear that the Doctrine of Proportionality is now an essential component of privacy law jurisprudence in India, the scope, ambit and extent of its applicability remains ambiguous due to certain distinctions in the various concurring judgments in the *J. Puttaswamy Case*.<sup>6</sup> The present article seeks to examine such distinctions and ascertain the nature and requisites of proportionality that are now required to be met in privacy law jurisprudence in India, in light of the evolution of the Doctrine of Proportionality in India through legal developments.

With regard to the right to privacy, the Indian perspective on the doctrine of proportionality faces challenges. The use of the principle requires a sensitive difficult exercise, taking into account the intricacies of India's different society, the requirement for public safety, and the steadily developing computerized scene. A problem that needs to be solved is ensuring that the doctrine is applied in the same way in all cases and jurisdictions.

All in all, the Indian viewpoint on the extension and ambit of the precept of proportionality concerning the right to privacy mirrors a promise to shielding individual protection while recognizing genuine state interests. The precept goes about as an imperative device in surveying the sensibility

and need of state activities, finding some kind of harmony between individual privileges and cultural worries. The Indian judiciary is able to navigate the complexities of privacy rights in the country thanks to the doctrine of proportionality, which provides a framework that fosters a rights based approach that upholds the fundamental values enshrined in the Indian Constitution.

### *Judicial Interpretation of the Doctrine of Proportionality: Implications for the Right to Privacy in India*

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The doctrine of proportionality is a legal principle that has evolved through judicial pronouncements in India. The principle requires that any infringement on fundamental rights by the state must be proportionate to the legitimate aim sought to be achieved. The principle has been applied by the Indian judiciary in a number of cases, particularly in relation to the right to privacy. The evolution of the doctrine of proportionality in India began with a landmark case<sup>7</sup> where the Supreme Court held that any restriction on the right to travel abroad must be reasonable and proportionate to the objective sought to be achieved. Since then, the principle of proportionality has been applied by the judiciary in various cases, including those related to the right to life and personal liberty.

Overall, the evolution of the doctrine of proportionality in India through judicial pronouncements has played a crucial role in ensuring that fundamental rights are protected and that any infringement on such rights by the state is proportionate and necessary. The doctrine continues to evolve as the Indian judiciary faces new challenges related to privacy, surveillance, and data protection.

The Apex court also reviewed the application of the principle of proportionality for the first time.<sup>8</sup> In that case, the Supreme Court of India, following a comprehensive assessment of the law pertaining to *Wednesbury* unreasonableness and proportionality prevalent in England, held that *Wednesbury* unreasonableness shall be the governing principle in India, so long as fundamental rights are not at stake.<sup>9</sup>

In a subsequent case<sup>10</sup>, the Supreme Court upheld the proportionality doctrine's application in India. In this case, however, the Supreme Court suddenly discovered that, since 1950, Indian courts had consistently applied the doctrine of proportionality when determining the validity of legislative actions in relation to legislations violating the fundamental

freedoms listed in Article 19(1)<sup>11</sup> of the Indian Constitution.

The Supreme Court has recognized in a considerable number of recent instances that proportionality is quickly replacing the Wednesbury reasonableness standard. In the case of<sup>12</sup>, the Supreme Court explicitly embraced the doctrine of proportionality.

***The proportionality principle analyses two aspects of a decision:***

1. Whether the relative merits of diverse objectives or interests were properly considered or balanced?
2. Whether the contested legislation was overly restrictive or imposed an unwarranted burden on affected parties under the circumstances?

The Supreme Court also held<sup>13</sup>, that the court in such a case would not be concerned with the validity of the decision, but rather the procedure used to achieve such a decision. The process of rendering a decision entail assigning relative weight to various aspects of the case, which is where the doctrine of proportionality comes into play.

It was determined that Judicial Review is not generally directed against a decision, but rather the decision-making process. The Court-Martial has the question and discretion to choose the selection and severity of the penalty.<sup>14</sup> It should not be so out of proportion to the offense that it shocks the conscience and constitutes solid evidence of bias.

As part of the concept of judicial review, the doctrine of proportionality would ensure that the sentence would not be immune to correction, even if the Court-Martial has exclusive jurisdiction over a particular aspect of the case. Irrationality and perversity are accepted Judicial Review grounds. All abilities are limited by the law. Thus, the proportionality doctrine has found immense application vide judicial pronouncements in India.

***Comparative Study of the Doctrine of Proportionality in Various Jurisdictions***

Regarding the right to privacy in India, international human rights frameworks and jurisprudence offer useful perspectives on the scope and scope of the doctrine of proportionality. Different worldwide courts and bodies have addressed the utilization of the convention corresponding to security privileges.

**BRITISH MODEL OF PROPORTIONALITY**

The British model of proportionality is a legal framework that has evolved through judicial decisions in the United Kingdom. The framework is used to assess whether a state's action that infringes upon a fundamental right is proportionate and necessary. It is a three pronged test that aims to balance competing interests and protect individual rights.<sup>15</sup> The first prong of the test requires that the objective of the state's action be sufficiently important to justify the infringement of the fundamental right. The second prong requires that there be a rational connection between the infringement of the fundamental right and the achievement of the state's objective. The third prong requires that the infringement of the fundamental right be no more than is necessary to achieve the state's objective. The British model of proportionality has been applied in a variety of contexts, including cases related to national security, immigration, and environmental protection. It has also been applied in cases related to the protection of individual rights, such as the right to freedom of expression and the right to privacy. The British model of proportionality has been criticized for being too vague and subjective. Critics argue that the test does not provide clear guidance on how to weigh the competing interests at stake and that it does not adequately take into account the severity of the infringement of fundamental rights. However, despite these criticisms, the British model of proportionality remains an important legal framework in the United Kingdom and has been influential in other jurisdictions, including India and Canada. The British model of proportionality has played a crucial role in balancing competing interests and protecting individual rights in the United Kingdom and beyond. Its three-pronged test provides a useful framework for courts to assess the proportionality of state action and ensure that fundamental rights are protected.

British idea of proportionality originated in *de Freitas Case*<sup>16</sup> where it was laid down:

***A decision is proportionate if:***

1. *The legislative (or executive) objective is sufficiently important to justify the limitation of a fundamental right*
2. *The measures designed to meet the legislative (or executive) objective are rationally connected to it*
3. *The means used to restrict the right or freedoms are*

*no more than necessary to achieve the objective.*<sup>17</sup>

In this paradigm, proportionality is not concerned with maximizing costs and benefits, but rather with pursuing predetermined goals through the most efficient (or least intrusive) means.<sup>18</sup>

### European Model of Proportionality

The European Model of proportionality conforms somewhat to the original principle of proportionality that originated in Prussia.<sup>19</sup> The said principle was accepted by the ECJ<sup>20</sup> in the landmark *FEDESA Case*<sup>21</sup>, and a four-stage test was laid down:

1. **Legitimacy:** Does the challenged Act seek a valid general aim in the context of the challenged right?
2. **Suitability:** Is the Act capable of achieving the aim?
3. **Necessity:** Is the Act the least invasive means of achieving the desired level of aim realisation?
4. **Fair Balance or Proportionality in the Narrow Sense:** Does this Act result in a net benefit when the reduction in the enjoyment of rights is weighted against the level of goal realisation?

The European model of proportionality has been used by the ECtHR and the EU in a variety of cases, including those related to freedom of expression, freedom of assembly, and the right to privacy.<sup>22</sup> It has been lauded for its detailed and nuanced approach to assessing the proportionality of state action, as well as for its ability to balance competing interests and protect fundamental rights.

However, the European model of proportionality has also been criticized for being too complex and for requiring courts to make subjective judgments about the balancing of competing interests. Nevertheless, it remains an important legal framework in Europe and has influenced the development of proportionality principles in other jurisdictions around the world.

This model focuses on optimising or striking a balance between the rights (which are viewed as protected interests and are being restricted by the proposed action) and the public interest or interest (which the proposed measure seeks to achieve). Consequently, it is referred to as the optimisation idea of proportionality.<sup>23</sup>

### International Human Rights Perspective

The right to privacy is recognized as a fundamental human right in international human rights instruments like the Universal Declaration of Human Rights (UDHR)<sup>24</sup> and the International

Covenant on Civil and Political Rights (ICCPR).<sup>25</sup> According to the United Nations Human Rights Committee, which oversees the ICCPR's implementation, any interference with privacy rights must be justified by a legitimate goal and proportionate to that goal.

The teaching of proportionality has been applied by global bodies to survey the similarity of state activities influencing protection. For instance, the Special Rapporteur on the Right to Privacy at the United Nations has emphasized the significance of proportionality in the context of surveillance practices, stressing that measures of surveillance ought to be necessary, proportionate, and subject to independent oversight.<sup>26</sup>

### Comparative Jurisprudence

The doctrine of proportionality and the right to privacy are discussed from a variety of perspectives in comparative jurisprudence from various nations. Strong frameworks have been developed by courts in Canada, Germany, and South Africa that look at how state actions affect privacy through the prism of proportionality. Legitimate objectives, rational connection, necessity, and balancing of interests are typical considerations shared by these frameworks and European approaches.

In conclusion, the Indian context and the international perspective on the scope and ambit of the doctrine of proportionality in relation to the right to privacy agree that individual privacy rights and legitimate state interests must be carefully balanced. Global common freedoms systems and the statute of worldwide courts give significant direction on the use of the teaching, featuring the significance of need, proportionality, and the assurance of key privileges with regards to protection.

### Incorporation of Doctrine of Proportionality in Indian Privacy Law Jurisprudence

The doctrine of proportionality has been incorporated in Indian privacy law jurisprudence through several landmark judgments of the Supreme Court. The doctrine requires state action to be proportionate and necessary to the legitimate aim it seeks to achieve. In the context of privacy law, the doctrine requires state action to be necessary and proportionate to the threat to privacy it seeks to address. The doctrine of proportionality has played a crucial role in shaping Indian privacy law jurisprudence. Its incorporation has ensured that the right to privacy is protected in a balanced and proportionate manner. It has provided guidance



to policymakers and law enforcement agencies in designing measures that are consistent with constitutional values and international human rights norms. The incorporation of the doctrine of proportionality in Indian privacy law jurisprudence has contributed to the development of a robust framework for the protection of privacy in India.

In the landmark *J. Puttaswamy Case*<sup>27</sup>, the Right to Privacy was declared as a Fundamental Right. The Court had two choices before it. One option was to simply affirm the forty years of precedents, during which numerous courts had articulated the scope of privacy limits in the context of specific instances. The second objective was to articulate a distinct set of criteria within the judgment itself. The court ended up doing both. In Paragraph 3 of the operative order, it was laid down:

*"The right to privacy is safeguarded as an inherent aspect of the right to life and personal liberty under Article 21 and as part of the freedoms granted by Part III of the Constitution"*

When it comes to Article 21<sup>28</sup>, the Court, recognizing the significance of the right to privacy as a component of life and personal liberty, has consistently insisted on a stricter standard than is typically applied to other Article 21 rights. When read together, paragraphs 3 and 4 of the Operative Order preserve both, the Court's limitations jurisprudence for fundamental rights in general such as Articles 14<sup>29</sup>, 19<sup>30</sup>, and 25<sup>31</sup> (which cover aspects of privacy) and the more rigorous limitations jurisprudence it has developed specifically for privacy under Article 21.

Justice Bobde properly noted out in his decision, violations under Article 21 had to comply to the "just, fair and reasonable" standard, as put out in *Maneka Gandhi v. Union of India*.<sup>32</sup> However, in *Gobind v. State of MP*<sup>33</sup>, the Supreme Court's first privacy-related decision, the Court had established a stricter variation of this test, which muddies the waters. It was ruled that privacy invasions could only be permissible if there was a "compelling State interest" at stake and if the law was narrowly tailored – that is, the State would have to show that there was no other, less intrusive method to achieve its goals.

The Apex court supported the constitutionality of phone tapping only by-passing guidelines that restricted its scope to narrow and focused surveillance.<sup>34</sup> In another surveillance case,<sup>35</sup> it was stated that the period of surveillance is limited in time and that requirement demands "minimum interception."

This is, in essence, constitutes the narrow tailoring standard, which falls under the broad definition of "just, fair, and reasonable" under Article 21, but which, as can be seen, is a more rigorous form of that standard that the Court has applied expressly to privacy claims.

In this aspect, the verdict appears to be somewhat divided. For instance, Justice Bobde interpreted Article 21<sup>36</sup> "just, fair, and reasonable" standard as requiring just that the state demonstrate that the law was "rational".<sup>37</sup> A simple demonstration of rationality is, however, far less rigorous than the compelling state interest narrow tailoring standard. However, no other judge agreed with this formulation.

Justice Sapre articulated his own standard of "social, moral, and compelling public interest in conformity with the law"<sup>38</sup> Justice Nariman did not articulate any distinct Article 21<sup>39</sup> standard.

However, it was Justice Chelameswar who most clearly distinguished between a standard "just, fair, and reasonable" test and the "compelling State interest" test, which he termed "the greatest standard of scrutiny a court can adopt." Thus, according to Justice Chelameswar, privacy claims themselves fell into two categories: ordinary claims, which would be evaluated using the "just, fair, and reasonable" standard, and more significant claims, which merited the "compelling State interest-narrow tailoring" standard. However, even this formulation failed to garner majority support.

Therefore, it remains to be seen if Justice Chelameswar's classification of privacy claims and his four pronged test, which seems to be the most elaborate, well reasoned, appropriate and applicable position of law can be given primacy in the future.

### Emerging Issues and Challenges

The acknowledgment of the right to privacy as a fundamental right in India has made ready for a significant lawful talk on the extension and utilization of the tenet of proportionality. A critical examination reveals a number of obstacles and complexities in the application of the doctrine of proportionality, despite the fact that it is thought to be an essential tool for determining the legitimacy of state actions that may violate the right to privacy.

- One of the central questions in applying the doctrine of proportionality to one side to protection is the absence of an unmistakable

and uniform norm for deciding the proportionality of state activities. The four pronged proportionality test, albeit broadly recognized, leaves space for translation and emotional decisions. Courts may apply different standards, resulting in inconsistent privacy rights protection. The doctrine's ability to protect privacy may be undermined by this lack of clarity.

- In addition, the doctrine of proportionality frequently necessitates a delicate balancing act between individual rights and state interests in its practical application. It can be subjective and contentious to determine the legitimate goals pursued by the state and determine whether the chosen means are rationally connected to those goals. When the doctrine is used as a mere formality to justify intrusive measures that disproportionately violate privacy, this subjectivity may permit potential abuse by the state.
- Besides, the principle of proportionality doesn't expressly resolve issues of mass reconnaissance and the assortment and utilization of individual information by both state and non-state entertainers. In the digital age, where extensive data collection and surveillance practices pose significant threats to privacy, these concerns have become increasingly relevant. The precept's ongoing structure may not satisfactorily address these advancing difficulties, requiring further legitimate turn of events and variation.

All in all, while the regulation of proportionality gives a significant structure to surveying the degree and ambit of the right to protection in India, it faces specific basic difficulties. The absence of a reasonable and uniform norm, subjectivity in its application, hardships in recognizing less prohibitive other options, and the developing idea of security worries in the computerized period all posture impediments to its compelling execution. Continual judicial interpretation, legislative reforms, and a robust legal framework that keeps up with technological advancements and balances the protection of privacy rights will be necessary to overcome these obstacles.

## SUGGESTIONS

The following are a couple of one of a kind thoughts connected with the degree and ambit of the precept of proportionality as for the right to privacy in India:

**Neutrality in technology:** A novel idea might be to include the principle of technological neutrality within the scope of the doctrine of proportionality in light of the rapid development of technology and its impact on privacy rights. This would necessitate determining whether state actions are technologically neutral—that is, they focus on the underlying purpose or objective rather than disproportionately on particular technologies or data collection methods.

**Relationships to Other Rights:** Investigating the interconnection of the right to protection with other central privileges, like opportunity of articulation, affiliation, or fairness, can give a special point of view. A more comprehensive and balanced approach to evaluating the actions of the state can result from examining how the doctrine of proportionality considers the interaction between privacy and these other rights.

**Privatization and Proportionality:** Although the principle of proportionality is typically applied to actions taken by the state, expanding its scope to include those taken by private organizations might be a novel concept. This would include investigating whether private entertainers, like partnerships and online entertainment stages, stick to the standards of proportionality while gathering, utilizing, and sharing individual information.

**Context of culture:** Considering India's assorted social scene, a one of a kind thoughts could be to investigate how the tenet of proportionality adjusts to various social settings and local area assumptions about protection. This could include perceiving and regarding social standards and values while evaluating the sensibility and proportionality of state activities that influence protection freedoms.

**Data Protection Laws' Proportionality:** A novel idea might be to investigate how the principle of proportionality is incorporated into the framework of data protection laws in light of the recent passage of the Personal Data Protection Bill in India. This could entail determining whether the laws explicitly incorporate the concepts of necessity and proportionality and how they are utilized in practice.

These thoughts expect to give new points of view on the extension and ambit of the regulation of proportionality as for the right to security in India. They support inventive reasoning and investigation of arising issues to guarantee a powerful and thorough insurance of security freedoms inside the Indian legitimate structure.

## CONCLUSION

The doctrine of proportionality assumes a critical part in moulding the extension and ambit of the right to privacy in India. The Indian Supreme Court's recognition of the right to privacy as a fundamental right laid the groundwork for applying the doctrine to evaluate the validity of state actions that affect privacy rights. According to an Indian point of view, the tenet of proportionality guarantees that state activities are sensible, fundamental, and proportionate to the genuine goals sought after. It provides a framework for balancing individual privacy rights with legitimate state interests and protects against arbitrary state intrusion. The utilization of the regulation requires a cautious assessment of variables like the authenticity of targets, normal association, less meddlesome other options, and the adjusting of advantages and damages to security.

In addition, comparative jurisprudence and international human rights frameworks complement the Indian perspective on the proportionality doctrine. In the context of privacy, the importance of striking a balance between individual rights and societal interests is reaffirmed by the emphasis on proportionality in international human rights instruments and international court jurisprudence. However, it is still difficult to effectively apply the proportionality principle. These difficulties incorporate the requirement for an unmistakable and uniform norm, subjectivity in its application, and tending to arising protection worries in the computerized age. Defeating these difficulties requires continuous legal translation, regulative changes, and a hearty lawful structure that stays up with mechanical headways while maintaining the key qualities revered in the Indian Constitution. In conclusion, the right to privacy in India is safeguarded and balanced with legitimate state interests when the doctrine of proportionality is effectively applied. The doctrine protects against arbitrary intrusions and reinforces the fundamental nature of privacy as an essential component of

personal liberty in the Indian legal landscape by providing a framework for evaluating the reasonableness and necessity of state actions.

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