The Supreme Court's Interpretive Approach in Application of Standards of Judicial Review in Administrative Actions

- *Priyasha Goyal**

Abstract

The doctrine of separation of powers demands that administrative decisions be kept outside the ambit of judicial review, unless such decisions fail the three-pronged test of illegality, irrationality and procedural impropriety. In India, most disgruntled public-sector employees demand a judicial review on grounds of irrationality, alleging imposition of arbitrary punishment in departmental proceedings in contravention of Article 14 of the Indian Constitution. Consequently, the courts are required to determine the standard of review to be employed while assessing the rationality of the quantum of punishment – a source of major confusion. The trajectory of the Supreme Court in determining the standard of review applicable to such cases has been extremely staggered, with a constant tussle between the Wednesbury test and the doctrine of proportionality ultimately culminating in the adoption of a hybrid test of "shockingly disproportionate" punishment. Through this paper, an attempt is made to delineate the trajectory of the Supreme Court and to demonstrate how the evolution of this hybrid test dilutes the doctrine of separation of powers by encroaching upon the need for minimal judicial interference in administrative actions.

I Introduction

Judicial review is a tool that enables the judiciary to critically assess the legislative and governmental action to determine whether they conform to the principles enshrined in the Constitution of India. Review of administrative action serves the dual purpose of protecting the rights of the citizens while 'restoring their confidence in the modern government by ensuring that basic unfairness is corrected'.[1] This power of review conferred upon the courts is limited to administrative action exercised within the realm of public law,[2] circumscribing the power to acts that have civil consequences and affect statutory and fundamental rights of citizens. In India, the judicial review of administrative action is limited to three grounds, thereby affirming the holding by Lord Diplock in *Council for Civil Services Union v. Minister of Civil Service* (hereinafter referred to as the *CCSU* case),[3] since excessive control and interference thwarts the efficiency of governmental action. Those

* *Priyasha Goyal is a student at Jindal Global Law School.*
[1] *Judicial Review of Administrative Proceedings,* MC Setalvad, published by the Indian Law Institute, at 72.
[2] *Judicial Review of Administrative Action*, Justice Syed Shah Mohammed Quadri, (2001) 6 SCC (Jour) 1.
[3] (1983) 1 AC 768.

administrative actions which do not satisfy the three-pronged tests of illegality, procedural impropriety and irrationality, invite judicial intervention, allowing the courts to evaluate the competence of the authority and the mode in which the authority takes the decision, but not the decision itself.[4]

As held by Justice Bhagwati in *Ramana Dayaram Shetty v. International Airport Authority of India*, arbitrariness and discrimination are merely 'different forms of irrationality' besides being vitiating factors under Article 14 of the Constitution.[5] An analysis of the decisions by the Supreme Court so far indicates that arbitrariness is largely alleged by disgruntled public sector employees when they challenge the punishment imposed by administrative authorities in departmental proceedings as being 'disproportionate'.[6] In such cases, the purported violation of Article 14 creates confusion amongst the judiciary regarding the standard of review to be employed – the Wednesbury test of unreasonableness or the doctrine of proportionality. Through this paper, an attempt is made to analyze the Supreme Court's approach in evaluating the 'irrationality' of administrative decisions which deal with punishment imposed by departmental proceedings, further assessing its consistency and use of interpretational tools in applying these standards.

II Development of the Bifurcated Model of Judicial Review:

The irrationality of administrative decisions is largely determined by applying the Wednesbury test of unreasonableness, developed by Lord Greene in the case of *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*[7] wherein he held that judicial interference is permissible only if the order is "contrary to law, or relevant factors were not considered, or irrelevant factors were considered while making the decision, or it was so absurd and perverse that no reasonable person would arrive at such a decision". This test was reaffirmed by Lord Diplock in the *CCSU case,*[8] wherein he equated irrationality with Wednesbury unreasonableness to hold that judicial review is permissible when "a decision is so outrageous in defiance of logic or acceptance of moral standards that no sensible person applying their mind to the question to be decided could have arrived at it". Adopting this approach, Indian courts also evaluate irrationality in administrative action that

[4] *Supra*, note 2.
[5] *Ibid.*
[6] *Wednesbury Reformulated: Proportionality and the Supreme Court of India,* Abhinav Chandrachud, Oxford University Commonwealth Law Journal, Vol. 13, No. 1, 2013.
[7] 1948 (1) KB 223.
[8] *Supra* note 3.

purportedly violates the ordinary statutory rights of citizens against the principle of Wednesbury unreasonableness[9].

This use of foreign decisions to administer justice in Indian courts is an external aid to interpretation, resorted to by Indian courts to understand the meaning of a statute more clearly. Indian laws are based on English common law while our fundamental rights are adopted from the US Bill of Rights. To ascertain the meaning of provisions and rights in Indian statutes more palpably, the Courts thereby take refuge in judicial pronouncements of foreign countries. They serve as source of guidance to judges when the domestic statutory provisions, and the internal aids thereof, fail to do the same. The fact that Indian judges adopted the foreign Wednesbury test of unreasonableness to apply to Indian cases where ordinary statutory rights of citizens are affected is therefore an external tool of interpretation used by Indian judges to ascertain the rules pertaining to ordinary statutory rights.

In recent years, apart from the traditional grounds of review of reasonableness, the test of proportionality has been largely deliberated upon by courts while reviewing administrative decisions that purportedly violate fundamental rights, to assess the relative weight accorded to interests and considerations by administrative authorities in arriving at their decision.[10] Drawing from the famous proposition by Lord Diplock that "you must not use a steam hammer to crack a nut if a nut cracker would do"[11], the fourfold test of proportionality includes assessment of the legitimacy of the aim, the suitability of the means employed, whether the aim could be achieved by a less restrictive alternative and whether the derogation is justified in the interests of a democratic society.[12] This test being more intrusive and bordering on incursion into the merits of the decision, courts are generally apprehensive of applying this doctrine while reviewing administrative decisions that affect ordinary statutory rights.

In *Ranjit Thakur v. Union of India*[13], the Supreme Court reviewed the order of the Summary Court-Martial in dismissing the appellant from military service for committing acts of insubordination. The appellant challenged the order for being disproportionate, unfair and arbitrary, claiming that it violated his fundamental right under Article 14. Justice Venkatachaliah, in allowing the appeal, held that the punishment was 'so disproportionate to the employee's offence so as to shock the

[9] *G.B. Mahajan v. Jalgaon Municipal Council,* [1991] 3 SCC 91; *Tata Cellular v. Union of India*, [1994] 6 SCC 651, *Canara Bank v. V.K. Awasthy*, (2005) 6 SCC 321.
[10] *Bhagat Ram* v. *State of H.P,* (1983) 2 SCC 442; *Ranjit Thakur v. Union of India*, (1987) 4 SCC 611; *Union of India v. G. Ganayutham*, (1997) 7 SCC 463.
[11] *R v. Goldsmith*, [1983] 1 WLR 151.
[12] '*Is the Supreme Court Disproportionately Applying the Proportionality Principle*?' Ashish Chugh, (2004) 8 SCC (J) 33.
[13] (1987) 4 SCC 611.

conscience of the court', thereby invalidating the order of dismissal. The test seemed to be applied in this case was that of proportionality, culminating in the view that a challenge of arbitrariness under Article 14 would invoke the primary reviewing authority of the courts. However, three years later in *G.B. Mahajan v. Jalgaon Municipal Council*,[14] Justice Venkatachaliah observed that 'reasonableness' of the administrator under Article 14 violation due to arbitrariness is judged on the basis of the Wednesbury test.

Similarly, the Supreme Court in the *Ganayutham case*[15] reduced the quantum of the punishment imposed on the Central Excise official and held that 'only in exceptional and rare cases where the punishment imposed by the disciplinary authority shocks the conscience of the court can the court interfere with the punishment'. By further observing that application of the doctrine of proportionality in administrative actions that affect fundamental rights is yet to be conclusively determined, the Court implied that it employed the Wednesbury test in determining the proportionality of the punishment. This gave birth to a series of confusion, ambivalence and misinterpretation by courts, with the two standards being employed highly erratically by the courts, culminating in development of an inconsistent thread of precedents in India.

The judiciary is required to adhere to the "rule of beneficial construction", wherein despite there being two or more possible ways of interpreting a section or a word, the meaning which gives relief and protects the benefits which are purported to be given by the legislation, should be chosen by it. A beneficial statutory provision, like the fundamental right to equality by freedom from arbitrariness and discrimination, has to be construed in its correct perspective so as to fructify the legislative intent. Although beneficial legislation does receive liberal interpretation, the judiciary should try to remain within the scheme and not extend the benefit to those not covered by the scheme[16]. Therefore, by applying both the principles of Wednesbury unreasonableness and proportionality to interpret arbitrariness and reasonableness under Article 14, the judiciary has attempted to extend the benefit of the statutory provisions to anyone with a grievance pertaining to arbitrariness under Article 14, as will be seen in the third section of this paper.

However, after the judgment of the Supreme Court in *Om Kumar v. Union of India*[17], a bifurcated model of judicial review has emerged to determine the irrationality of administrative actions that purportedly violate Article 14 of the Constitution, based on a similar approach adopted by the

[14] (1991) 3 SCC 91, at 111
[15] *Supra*, note 10.
[16] *Sant Ram v. Rajinderlal*, 1979 SC (1) RCJ 13.
[17] (2001) 2 SCC 386.

courts[18] in United Kingdom. This sought to give clarity in application of the two tests, creating two distinct spheres of violation within Article 14 – one, on grounds of discrimination, and the other, on the basis of arbitrariness.

In cases where the administrative action is challenged for being discriminatory and consequently violating Article 14, the Court acts as the primary reviewing authority. In such cases, the standard of review to be applied is that of proportionality, ensuring that 'administrative authorities maintain a proper balance between the adverse effects which the administrative order may have on the rights, liberties or interests of persons, and the purpose which the order intended to serve.' The courts are required to employ the four-pronged test of proportionality to evaluate whether the administrative action is discriminatory and hence violative of the right to equality enshrined in Article 14. However, when administrative action is challenged for being arbitrary, it only 'indirectly' violates the right to equality under Article 14. Arbitrariness was established as a ground of challenge by Justice Bhagwati in *E.P. Royappa* v. *State of T.N*[19], by giving Article 14 an expansive interpretation. He observed that "from a positivistic point of view, equality is antithetic to arbitrariness and where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law, therefore violating Article 14". Therefore, when an administrative action is challenged on grounds of arbitrariness, the courts play a secondary role in examining whether the administrators in discharging their primary role as adjudicators have adhered to the standards laid down in the Wednesbury test. The courts cannot apply the more intrusive proportionality test in such cases, limiting their intervention to judging the reasonableness of the decision-making process on the basis of the Wednesbury test.

III Judicial Interpretation of "shockingly disproportionate" to secure legislative intent

In justifying the model adopted in the *Om Kumar case*, the Court observed that Wednesbury test has been consistently applied by the judiciary in reviewing allegedly arbitrary administrative orders[20]. Even in *Ranjit Thakur's case*, the Court observed that the use of the term 'shockingly disproportionate' by Justice Venkatachaliah does not imply the application of proportionality test. The term was merely used to judge the reasonableness of the quantum of punishment in application of the Wednesbury test, as can also be inferred from his later judgment in the *G.B.*

[18] R. *(Assn. of British Civilian Internees: Far East Region) v. Secretary of State for Defence*, 2003 QB 1397.
[19] AIR 1974 SC 555.
[20] *Indian Express Newspapers Bombay (P) Ltd. v. Union of India*, (1985) 1 SCC 641; *Supreme Court Employees. Welfare Assn. v. Union of India*, (1989) 4 SCC 187; *U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd.*, (1993) 2 SCC 299.

Mahajan case[21]. The Court itself employed the terminology of 'shockingly disproportionate' to hold that the quantum of punishment imposed by the Delhi Development Authority on its employees, for engaging in fraudulent activities, complied with the Wednesbury standard, consequently refraining from interfering with the order. Therefore, this demonstrates that the Court sought to assert that the term 'so disproportionate to shock the conscience of the Court' was merely a reformulation of the elements of absurdity and perversity inherent in the Wednesbury principle of unreasonableness. Had it been referring to the proportionality doctrine, then the four-pronged proportionality test borrowed from the United Kingdom would have to be fulfilled, mere compliance with the 'balancing' component would not suffice.

This indicates how the judiciary favourably interpreted the terminology used in its previous decisions to justify its usage of the Wednesbury test. It asserted that the term "disproportionate" should not be given its literal dictionary meaning and should be adjudged based on the legislative intent it was trying to uphold. They expanded the application of the rule of purposive interpretation to judicial decisions to argue that the usage of the "disproportionate" terminology by the courts was to give effect to the purpose for which the legislature implemented Article 14. The courts implied that the legislative intent while formulating Article 14 was to ensure that all citizens of India enjoy the right to equality and freedom from any kind of arbitrariness. To ensure the latter, the test of Wednesbury unreasonableness were developed and it was aimed to protect the fundamental rights of citizens from arbitrary administrative actions. Therefore, by construing the term "disproportionately shocking" in its "colour, context and intent, rather than its literal import"[22], the courts held that the test being applied was not that of proportionality but that of permissible Wednesbury unreasonableness.

However, the language of later judgments reflects the use of the terminology of proportionality, without referring to the Wednesbury test, creating the impression that the standard of review being applied is that of proportionality and not unreasonableness. The courts muddled the usage of the term "shockingly disproportionate" to such an extent that the beneficial construction it set out to give to the tests to preserve the right under Article 14 have now lost their essence. The confusion so created is increasingly reflected in the legal framework governing review of the quantum of punishments imposed by administrative orders. It produced great inconsistency in application of the standards, which became prima facie evident with the Supreme Court's decision in *Management*

[21] *Supra* note 14.
[22] *Supra* note 16.

of Coimbatore District Central Cooperative Bank v. Secretary, Coimbatore District Central Co-operative Bank Employees Association.[23]

In this case, the Court categorically rejected the application of the Wednesbury test, and without referring to its judgment in the *Om Kumar case*, it held that the standard of 'shocking disproportionality' was always a reference to the doctrine of proportionality. It effectively overturned the principles carefully developed over the past seven years and held that the punishment of reduction in salaries of fifty-three employees of the Bank, for going on an unauthorized strike, satisfied the test of proportionality. The two-judge bench skillfully maneuvered the principle of proportionality to hold that the 'balancing' and 'necessity' tests of proportionality adopted by the UK courts are not similarly applicable in India, with the Indian courts adopting the 'shockingly disproportionate' standard instead. It set a contradictory precedent regarding the standard for judicial review of the quantum of punishment in administrative orders, bestowing higher value upon a misplaced interpretation of the proportionality doctrine. In making the proportionality test less intrusive by negating the 'legitimate aim', 'suitability' and the 'least restrictive alternative, or necessity' limbs of the test, focusing solely on the 'balancing' test, the Court sought to justify its applicability to administrative actions. However, the implications of such a decision are monumental, allowing the courts to interfere with any administrative action that does not align with their view of the punishment to be imposed. It carries the possibility of effectively frustrating the principle of administrative discretion and reducing the efficiency of governance. It stretches the application of judicial review to safeguard the right under Article 14, by giving proportionality and arbitrariness a new meaning altogether.

In *State of M.P. v. Hazarilal,*[24] a two-judge bench of the Court observed that the doctrine of proportionality had effectively replaced the Wednesbury principle of unreasonableness, changing the legal parameters of judicial review.[25] The carefully curated twin model of judicial review established in the *Om Kumar case*, differentiating between the repercussions of a discriminatory and arbitrary action on the fundamental rights of aggrieved persons, was thwarted by this Court in completely obliterating the Wednesbury test of unreasonableness. The use of 'shockingly disproportionate' standard while determining unreasonableness was espoused to ensure minimal judicial intervention, essentially ensuring that the doctrine of separation of powers is led to its fruition. However, in application of the intrusive proportionality test on the discretionary powers of the administrative authorities, courts will walk on the thin line that separates a merit-based

[23] (2007) 4 SCC 669.
[24] (2008) 3 SCC 273.
[25] *Ibid*, 11.

review from a judicial review limited to assessing the competence of the administrator and the decision-making process. This change in legal standards, the contours of which were shrewdly modified by the courts, led to a greater ambivalence in the applicability of the two tests in this sphere of administrative action.

The confusion created by these decisions becomes manifestly apparent in the subsequent decisions of the Supreme Court, when the Court started applying both the tests simultaneously in reviewing administrative orders. In *Chairman, All India Railway Recruitment Board v. K. Shyam Kumar*[26], while elaborating upon the parameters of the two tests in assessing irrationality, the Court observed that the 'spheres of Wednesbury unreasonableness and proportionality experience some degree of overlapping, due to lack of a principled approach to proportionality'. It used both the tests to assess the order of the Railway Recruitment Board in organizing a retest for Group D candidates who secured the minimum qualifying marks, holding that the order was 'fair, reasonable, well-balanced and harmonious'. The Court took refuge in the English administrative law position where both the tests continue to co-exist, with proportionality being applied for violation of human rights and fundamental freedoms while Wednesbury test is confined to violation of citizens' ordinary rights in domestic law.[27] The application of both the tests extensively in English common law seems to have been the external aid to interpretation that the Court relied upon when it applied both the tests simultaneously in reviewing the administrative order of the *Railway Recruitment Board.*

In the same year, in *Charanjit Lamba v. Commanding Officer, Army Southern Command*[28], the Supreme Court categorically recognized the doctrine of proportionality as a ground of judicial review, stating that 'an order of punishment can be interfered with only when the punishment is so outrageously disproportionate to the nature of the misconduct that it shocks the conscience of the court'.[29] The Court justified its decision to use the proportionality test on the grounds that it is an inherent requirement of Article 14 that the punishment imposed upon a delinquent should be commensurate to the nature and gravity of the misconduct.[30] However, it did not apply either the proportionality test or the Wednesbury test, instead developing a hybrid test which stated that 'only in cases where the punishment is so *disproportionate* to the gravity of the charge that no *reasonable person* placed in the position of the disciplinary authority could have imposed such a punishment, can a writ court step in to interfere with the same'.[31] This shows that the Court applied

[26] (2010) 6 SCC 614.
[27] *Ibid*, 28.
[28] (2010) 11 SCC 314
[29] *Ibid*, 12.
[30] *Ibid,* 19.
[31] *Ibid*, 20.

the Indian version of the doctrine of proportionality, which rejects the elaborate three-pronged approach and instead stems from the reasonable man theory of Wednesbury unreasonableness.

IV Conclusion

The trajectory of the Supreme Court in determining the standard of review to be employed while reviewing the quantum of punishment imposed by administrative orders, as demonstrated above, has been rather chaotic and inconsistent. Beginning with a strict adherence to the Wednesbury principle of unreasonableness, relying on the test of absurdity and perversity to determine unreasonableness, the Court gradually proceeded to incorporate the proportionality doctrine. The simultaneous advancements in English Administrative Law, wherein greater emphasis was placed on the doctrine of proportionality, influenced the gradual incorporation of proportionality as a ground of judicial review in India. The Court steadily proceeded towards using the terminology of 'shocking disproportionality' to assess the irrationality aspect of judicial review, thereby initiating a series of ambivalent judgments where some associated the standard with proportionality while some held it to be a part of the Wednesbury test. The persistence of this confusion led to a complete misinterpretation of the two doctrines, with the Court taking refuge in applying both the principles simultaneously while reviewing the administrative orders. Finally, the Court adopted a hybrid version of the two tests, giving birth to a new test of judicial review that rejects the four-fold test of proportionality while simultaneously rejecting the minimal interference principle under the Wednesbury test.

The adoption of this middle ground of sorts is still implemented under the mask of Wednesbury unreasonableness, the Court being apprehensive of the repercussions[32] that will flow from a complete rejection of this principle. The obliteration of the Wednesbury test will result in a dilution of the doctrine of separation of powers, while also undermining the differential impact of a discriminatory and arbitrary act upon the right to equality under Article 14. The judicial interpretation needs to focus more on limiting the benefit of the statutory provision to ensure that it does not encroach upon the separation of powers doctrine rather than expanding it further. Therefore, the Court needs to re-evaluate its current position to develop a test that does not undermine the basic tenets of the Constitution of India while simultaneously protecting the rights of those aggrieved by excess administrative discretion.

[32] *Chandrachud*, *Supra* note 6.