Research Journal of Social Sciences & Economics Review
Vol. 2, Issue 1, 2021 (January – March)
ISSN 2707-9023 (online), ISSN 2707-9015 (Print)
ISSN 2707-9015 (ISSN-L)
DOI: https://doi.org/10.36902/rjsser-vol2-iss1-2021(251-258)

RJSSER
Research Journal of Social Sciences & Economics Review

The *Historical Origins of the Proportionality Doctrine* as a tool of Judicial Review: A Critical Analysis

* Dr. Syed Raza Shah Gilani, Assistant Professor (Corresponding Author)

** Dr. Ilyas Khan, Assistant Professor

*** Shehla Zahoor, Lecturer

Abstract

It is a fact that the doctrine of Militant Democracy is essential to protect society from the threat of terrorism. On the other hand, we should not ignore the element of its interpretive nature, which means that there is an apprehension that the states having a poor human rights record may use it to achieve their ulterior motives while damaging the fundamental rights of the individual. In Europe, the ECtHR and domestic courts at the national level are duty-bound to save these fundamental rights. Hence, the doctrine of proportionality is an essential tool to check the militant democracy measures on the fundamental freedoms and human rights. To understand the authenticity of the doctrine of proportionality, it is essential to establish its origin and stages of evolution, because this will enable me to explore the use of this doctrine, which is adopted by many nations, before analyzing its use in the UK's legal system.

Keywords: Legal History of Proportionality, Wednesbury Unreasonableness, Subsidiarity

Introduction

Principally, in this article, I assess the proportionality principle in the framework of EU law from a procedural, theoretical and constitutional point of view to further examine the role of this theory. It is pertinent to mention here that the UK has not accepted this doctrine of proportionality as a general criterion of review (Rivers, 2006). Therefore, I will discuss the ramifications of the concept of proportionality are the general principle of law, and the purpose it has, namely to guarantee the validity of judicial decisions. I say that there are many ways in which this theory can be viewed. But first, this article analyses the doctrine of proportionality from its historical perspective as a tool that mediates between the Council of Europe (with its emphasis on the rights of the individual) and the UK (with its focus on protecting society from aggression) (Himma, 2017). Thus, it addresses the question of how the doctrine of proportionality is used as a tool to simultaneously balance the protection of the rights of people and the wellbeing of individuals.

The doctrine of proportionality is of European origin: it can be traced back to 18th century Prussia, after which it can be found in the German judicial system in the 19th century. After the Second World War, it became integrated into the constitution of Germany, and it was later adopted by the ECHR in 1959 (Jackson, 2014). This doctrine makes a significant contribution to human lives since proportionality also denotes justice; it can be seen in the hands of the statue of Justice holding the scales. The doctrine of proportionality also reflects balanced thought. Hence, demand from ourselves and others to act proportionally is logical and justifies the need for the punishment to be proportional to the offense. Thus, the notion of "an eye for an eye" is considered to be a wise response. This doctrine has inspired many political and legal scholars throughout the generations.

In the development of the doctrine of proportionality as a balanced concept, two Greek classical principles feature prominently. The first is the principle of corrective justice (*Justitia vindictive*), and the second is that of distributive justice (*Justitia distributiva*) (Sullivan, 2007). This principle can be found in the early Roman legal system and was also present in the Magna Carta

* Department of Law, Abdul Wali Khan University Mardan Email: sgilani@awkum.edu.pk.
** Department of Law, Abdul Wali Khan University Mardan Email; drilyas@awkum.edu.pk
*** Department of Law, Shaheed Benazir Bhutto Women University, Peshawar.
Email: shehlazahoor@sbbwu.edu.pk

1215: A free man shall be prosecuted for a minor crime only concerning the degree of his crime, and for a serious offense correspondingly but not in such a manner as to deprive him of his livelihood.

The work of S. Thomas reveals his significant contribution to the development of this doctrine. The conception *international la doctrine* of a "Just War" is a concept of the Middle Ages which makes explicit a need for principled warfare (Cohen-Eliya M. &., 2011).

The Contribution of Carl Gottlieb Alvarez

In understanding of the doctrine of proportionality, Carl Gottlieb Svarez's contribution is significant and vital, and in this regard, the primary elements of proportionality also as norm of national law can be observed in German constitutional law of the 18th century Carl Gottlieb Svarez (1746-1798). crafted a major contribution to the development of the contemporary principle of proportionality, even though he never used the precise concept "proportionality" – "Verhaltnismassigkeit" in German – in his manuscripts Svarez was the main drafter of the Prussian Civil Code of 1794 (*Allgemeines Landrecht fur die PreuBishen*). In a series of lectures between 1791 and 1792 (known as the *Kronprinzenvortage*), he noted that following the principal tenets of the Enlightenment, A State may restrict the freedom of a subject only in guaranteeing the freedom and security of others. More precisely, he stressed the "minimum bond" that must occur between the social hardship to escape and the restriction of one's "natural freedom." Svarez viewed the requirements above as expressions of both reasonableness and justice (Cohen-Eliya &., 2011).

In my opinion, it is proven court precedent that a deviance from the free flow of goods, individuals, resources, and services is justified only if it seeks a valid purpose based on either the Convention or the case law even if that's the case, the condemnation would be deemed legal only if it is sufficient to accomplish the desired purpose and if it does not go beyond what is required to achieve it. While the thorough examination of the proportionality test of the Court goes much beyond the purpose of this paper, it is worth noting some of the major aspects of the assessment of the proportionality of the ECJ. Next, it's indeed worth bearing in mind that 'that there's an independent definition of proportionality in EU law. Even though some authors have pointed to the prevailing influence of some national models, in particular the German *Verhiltnismassigkeitprinzip*, the EU version of the test seems not to formally strictly follow the national model (Bendor, 2015).

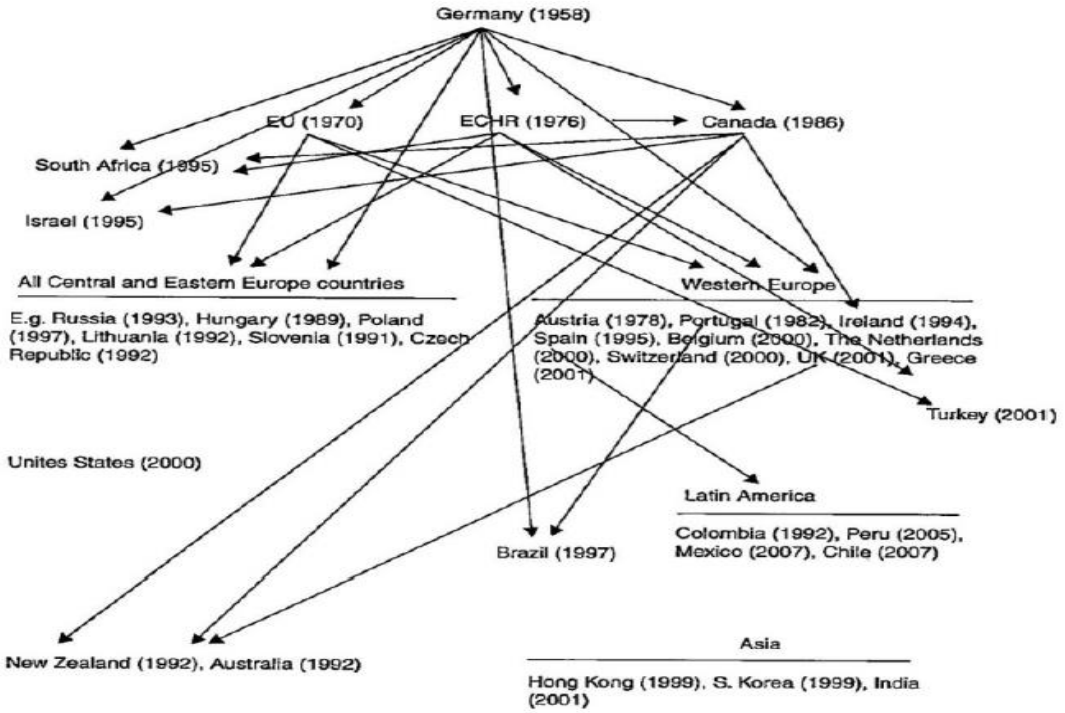

Figure No -1 The Migration of Proportionality

The Transition of the Concept of Proportionality in the European Law

As is well known, alongside the law of each of the European Union (EU) member states stand European law. This law is exemplified by the European Convention for the Protection of Human Rights and Fundamental Freedoms, its amending protocols, and several of the treaties establishing the

EU. Some courts are specifically established and authorized to be the final interpreters of these documents. The European Convention for the Protection of Human Rights and Fundamental Freedoms established the ECtHR, which sits in Strasbourg. The establishing treaties of the EU are interpreted and operated by the European Court of Justice, which sits in Luxembourg. The relationships between the member states' courts and these European courts are complex and elaborate; an examination of these relationships is beyond the scope of this work. Importantly, however, a reciprocal movement of ideas exists between the member states' courts and the European courts (Gilani S. R., 2019). Thus, legal doctrines developed by the European courts are often adopted by several of the member states, while doctrines developed by a member state court may later be adopted by the European Courts.

The Rise of the Proportionality Doctrine

It is pertinent to mention that human rights are intertwined with the doctrine of proportionality. The doctrine has received a great deal of respect by the various constitutional courts in the continent of Europe, the UK, Israel, Canada, New Zealand, and Africa. Many treaties based on the legal system have welcomed this doctrine into their constitutions, the ECtHR being one of the best examples. The popularity of the doctrine as a global model is increasing because of its constructive approach and good practice standard of rights adjudication. Mostly in a test of proportionality, the court did waive the exercise of legislative powers for which there is no measures – in between objective to be attained and the means used to that end, or where the restrictions placed by public agencies or lower courts are entirely off from ratio to the wrongdoing in question.

Thus, "the legal action which based on an arbitrary oppresses would be dismissed by the court" (Gilani S. R., 2020). The principle of proportionality assumes that the court would then "assess for itself with the pros and cons of a due process and because such an action would be enforced as legitimate only if the balancing act is advantageous." Unless this action is unjustified to the wrongdoing, it will be suppressed. For the past few decades, this doctrine has received significant attention in the US judicial system, which had originally formally rejected it. In an about-turn, the US Supreme Court began to apply the doctrine in a few cases.

A practical, although not formally recognized, structure of the doctrine of proportionality is as follows:

1. Did the legislature in setting the restricting pursue a legitimate aim?
2. Were the methods employed suitable for the achievement of the aim?
3. 3. Does the objective are being accomplished by using a less rigid option?
4. In general, is the deviance permissible in the interest of a civilized society? (Chandrachud, 2013)

Proportionality, as Moller put it, would be a doctrinal method for settling disputes between the right and the opposing right or interest, at the center of these is the balancing stage that allowed the right to still be balanced against the opposing right or value, and "this dispute is eventually settled at the balance stage. Moller understood that different approaches existed to portray this notion by the courts in the structure of constitutional rights legislation. Moller additionally acknowledged that the conclusion to the opposition at the balancing assessment ought to be led by the court; he expressed that: ...there is still a real disagreement (adequateness) here between interest and the appropriate (legitimate) competitive interest (legitimate objective) which cannot be settled in a far less restrictive manner (necessity) (Cohen-Eliya M. &., 2011).

Moller believed that each step elicits a query, and requires an adequate response. Therefore, if the court wishes to establish a valid objective, the foremost duty of the court is to take into account, if a rule or action is reasonably legitimate, whether or not the people who have taken it have the right concerns in their minds. After outlining a valid objective for a certain act, the judiciary should then contemplate, if intervention leads to the achievement of goals to some degree, however minimal, then the adequacy test is fulfilled as it has been defined that there is a conflict between the different components. Moller referenced the tertiary section to establish that there must be no other, less restrictive policy that achieved the legitimate goal equally well. However, he did not mention how to overcome the issue that might arise if the less limiting policy needs additional resources or finances (Jackson, 2014).

Finally, Moller expanded upon the final section of the proportionality assessment. This is also known as the equilibrating stance – "a moral argument to which of the competing interests take

priority in the case at hand" – which, in the circumstance of the constitution, necessitates "balancing all the relevant considerations" and governing "the sacrifice that can legitimately be demanded from one person for the benefit of another person or the public." For Moller, this is the biggest challenge, as it demands the utmost degree of judgment: a substantive legal choice from the court over which of the opposing two interests is more required. Huscroft, Miller, and Webber argue: What is promised by the theory of proportionality is an often used construct, the importance of this is not in its growing popularity, but in how that form affects (some would argue controls) the manner wherein the courts make judgments in most of the great political and moral disputes facing the political societies (Cohen-Eliya M. &., 2011).

The controversy is really about how to balance incommensurable or abstract interests objectively. As has been indicated, there is no uniform mechanism with which to apply the doctrine of proportionality. Some courts articulate the balance stage as a comparison of the harmful effects on a right against the importance of the objective, rather than against the beneficial effects of the limitation. Other courts use this doctrinal framework without addressing the final stage; while doing so, they stress that the question of "fair balance" is inherent in the whole of a bill of rights, which can be read as being, concerned both with the demands of the general interest of the community and the requirements of the protection of the individual's human rights. The majority of the courts use a systematic review approach, and while applying the doctrines of proportionality, they address each question of the doctrine (Bendor, 2015). Some courts consider the standing of a judge to arrive at a global judgment on proportionality and not to adhere mechanically to the sequential checklist. Several judges have bound themselves to implement the current values of this notion and to only entertain arguments relevant to one question in their answers to another.

The query arises as to whether implementing restrictions on the liberty of expression can be validated by the benefit to society in highlighting tolerance and amending the damage inflicted by racist expression. In this context, in the prevention of assisted suicide, can it be reasoned as an inherent right for people to select and choose the place and time of their death? Conversely, the law of state protection rationalizes the creation of restrictions on the due course rights of alleged terrorists. All of these questions can be well answered by analyzing them in the framework of the doctrine of proportionality (Rivers, 2006). However, this does not mean that the doctrine of proportionality is a uniform principle; nor does it mean that this underestimates its significance. To conclude, there are a variety of ways in which the doctrine of proportionality can be applied, and essentially, there are different understandings of how proportionality functions. Proportionality is opposed and protected in multiple fashions. However, its main purpose is to check the balance between the interest of the society and the right of the individual.

The key elements of the doctrine of Proportionality

It is essential to understand the main components of the doctrine of proportionality first and then analyze its application. Principally, the doctrine of proportionality is based on the following components: (a) a reasonable relation between the appropriate objective and the means used by the legislation to accomplish it; (b) the objective cannot be accomplished employing a less stringent statutory right; (c) there must be an appropriate balance between the social advantage of achieving the appropriate objective and the damage caused to the right (*proportionality stricto sensu* or the proportionate effect) (Porat, 2009). Hence, the doctrine of proportionality satisfies a binary purpose: on one side it recognizes the limitations on human rights if it is according to law, and on the other side, it subjects these limitations to certain conditions, namely those restricting from proportionality (see Figure No-2 below) (Gilani S. R., 2019).

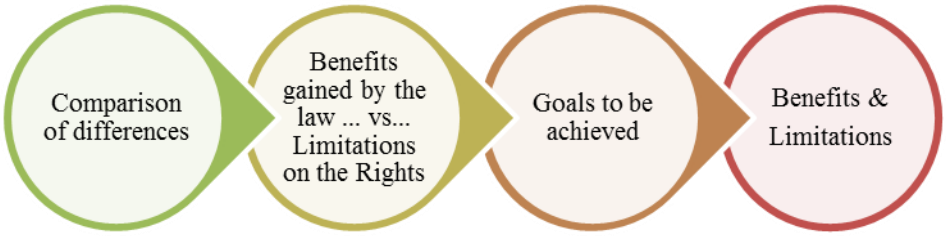

Figure No -2

Essentially, the doctrine of proportionality reflects the principle that the constitutional rights and their limitations are the "flip sides of the same constitutional concept" (Okonjo, 2015). It demonstrates that human rights can be derogated in a prescribed manner and accordance with the law.

While looking into the structure of the doctrine of proportionality, I can say that it has two main elements. The first is legality and the second is legitimacy. In simple terms, legality denotes the limitations prescribed by the law and legitimacy means the fulfillment of compliance with the needs of proportionality. It is more interested in knowing the legal situations and circumstances that allow limitation of the constitutional right. There are two key enabling conditions in this case. The first is an acceptable target, and the second is an appropriate way. The threshold criterion is an acceptable objective and little attention is given to the means used by the statute to meet the objective in deciding it. If the goal is proportional and it fulfills the purpose, it is acceptable and is considered to be appropriate, even if the method of achieving the goal is inappropriate. The notion of proportionality consists of the following three elements: (a) a reasonable relation between the acceptable objective and the means being used by the law to accomplish it; (b) The goal is accomplished employing a less stringent statutory right; (c) an equal balance must be struck between the social advantage by reaching the reasonable objective and the harm incurred to the right (proportionality *stricto sensu* or proportionate impact) (Endicott, 2014). Hence, the doctrine of proportionality has two key functions: the first is to legitimize the limitations on rights, and the second is to put conditions on them as directly derived from proportionality. This doctrine demonstrates that fundamental rights and their limitations are the two sides of the same coin: i.e. the constitution. It carries the message that human rights are not generally absolute but are non-derogable rights; however, it also makes clear that limitations themselves have limits (Hamid, 2018).

The formal role of proportionality in the constitutions of the states

This doctrine, following the evolutionary concept in Germany and European law as demonstrated both by the ECJ and by the ECtHR, began to gain power in the laws of Western Europe's states. Thus, the concept of proportionality was soon accepted in Spain, Portugal, France, Italy, Belgium, Greece, and Switzerland. Turkey underwent a similar process. In some of these countries, the concept of proportionality was explicitly included as part of a constitutional limitation clause in the chapter on human rights. Taking into consideration the international and national human rights law, proportionality is a general concept of international law. It serves several functions; it is a central feature of the laws of self-resistance (Lurie, 2020).

This element of proportionality is peculiar in that it forms part of the bond between countries, part of the body of duties and responsibilities owed by one country to the next. Accordingly, examining proportionality in international human rights law is very important because international law is indeed one of the main contributors to the shaping of domestic law, mostly constitutional law relating to human rights. In this regard, the classic example is Article 39(1) of the South African Constitution, which reads "when interpreting the Bill of Rights, a court, tribunal, or Forum … (b) must consider international Law (Cohen-Eliya M. &., 2013). Another example is Article 10(2) of the Spanish constitution (1978), which reads as follows: The values of rights and freedoms acknowledged in the Constitution shall be read in compliance with the Declaration of Human Rights and the international conventions and obligations accepted by Spain. Simultaneously, the domestic constitutional law regarding human rights affects the developing understanding of international norms. We are faced, therefore, with the cross-migration of human rights law. The concept of proportionality, in turn, was developed in much the same way.

The role of Proportionality in the European Convention of Human Rights

Notably, the word "proportionate" is not mentioned anywhere in the text. However, some of the rights and fundamental freedoms contain the limitation clause, which recommends the protocol at the time when limiting the right. Generally, this limitation clause has one principle, namely that the limitation should be proportionate to the extent "necessary in a democratic society". Some rights are not accompanied by the limitation clause which is also construed as qualified rights. Following the Strasbourg court, the doctrine of proportionality, including its four essentials, is a key feature of human rights. It first appeared in the ECtHR in a case famously known as Eissen, and the judgment in which this principle was first applied was the Handy side case in 1976. The court stated in this judgment that every formality, condition, constraint, or punishment levied in this area must be directly

proportional to the valid goal sought (Möller, 2012). The motivation for this wording came from rulings of the German Constitutional Court concerning the doctrine of proportionality.

As previously noted, the term "proportionality" does not occur in the constituent documents that establish the law of the EU. The concept was developed by the ECJ to evaluate EU institutions and cases where a Member State court refers a legal issue to the ECJ to be decided in compliance with the concept of EU legislation. This was done in the light of the ECJ's recognition following notions from French law of general principles of law that exist alongside the formal written texts. Among those general principles of EU law is the safety of human rights, the fulfillment of "legitimate expectations", basic principles of natural justice, and the rule of law. The concept of proportionality was given a central place among those principles. The significance of it being a general principle is that it applies throughout EU law (Jackson, 2014).

According to several commentators, the concept was adopted by ECJ as influenced by German law. It was initially explored by the ECJ in a series of cases from the 1950s and 1960s. However, it was fully developed in the 1970s in the case of International *Handelsgesellschaft.* The Advocate General on the case, Dutheillat de Lamonthe, thoroughly examined the concept of proportionality and found that it had its roots in documents that helped to establish the EU. In the case, the Court examined a challenge to a direction of the European Economic Community that allegedly violated a human right. It was also appraised early in the 1980s, when the court assessed the congruence between the legislation of the member states and the EU. The doctrine of proportionality test was significantly applied in the case famously known as Watson and Belmann. The Belgian government adopted Article 48 (3) of the treaty and passed a law to deport foreign workers who failed to register with the police (Cohen-Eliya M. &., 2011). As mentioned earlier, the European Court of Justice applied the famous three principles test for the first time in this case, and it was concluded that: The government's aim is legitimate to extend the registration of foreign workers to account; however, the court noted that the deportation penalty was overly severe and invalidated. The court has proposed a fine as a 'more appropriate deterrent.

The doctrine of proportionality, which has become an important part of the jurisprudence of ECJ and the ECtHR, denotes that the authorities should exercise powers that necessarily have an adverse effect on the rights of an individual. The authorities must take a good measurement at the time of using these powers and should use the least restrictive measurement to cause less damage to their rights. The doctrine of proportionality also intimates that sanctions, restrictions, and penalties that are disproportionate in severity or extent to the aim pursued should not be imposed. As embodied in the convention, when applying EU law, the courts must give regard to the principle of proportionality.

It is essential to mention here that with a few exemptions; the ECHR does not safeguard all rights every time. Hence, in cases related to non-absolute rights, the doctrine of proportionality is an essential process for the Strasburg Court (ECtHR) to accommodate qualified rights in the community and other competing premiums. The ECtHR, for instance, applies this doctrinal study to see whether interference with Articles 8, 9, 10, or 11 of the ECHR is "necessary in a democratic society". If intervention responds to an urgent social need, and if it is proportionate to the legitimate objective pursued." In the same context, the Strasburg Court has also taken a similar approach in the interpretation of the theory of proportionality to determine whether the discrepancy has an "objective and logical basis" as referred to in Article 14 of the EMCDH and to "examine whether there is a limit as referred to in Article 14. Article 1 of Protocol 1 respected a *fair balance*". More generally, the ECtHR has recognized that this doctrine is "inherent in the whole of the Convention". In 2004, a draft of the Treaty establishing a Constitution for Europe was accepted by representatives of twenty-five member states. According to the draft, this attempt at a European Constitution contained a bill of rights. The rights were phrased as "absolute"; nonetheless, some were accompanied by specific limitation clauses, and all were governed by a general limitation clause (Article 112 (1) of the Treaty), which read:

> Any restriction on the enforcement of the power and freedoms accepted by the Charter must be laid down in law and must respect the essence of those freedoms and rights. Subject to the principles of proportionality, restrictions may be imposed only whether they are essential and truly achieve the requirements of personal

interest identified by the Confederation or a need to defend the freedoms and rights of everyone else (Rivers, 2006).

It's not like all EU Countries have accepted this plan. Rather, the Lisbon Treaty was drawn up by the Participating Countries in 2007 and came into effect on 1 December 2009. Article 3b (4) of the Treaty of Lisbon reads: 'Under the rule of law, the substance and mode of operation of the Union shall not surpass what is appropriate to meet the purpose of the Treaties. Furthermore, the Council of Europe gives rights to the Charter of Rights and freedoms and its broad restriction provision.

Conclusion

The UK judicial system prefers the doctrine of unreasonableness when making a judicial review and has not yet accepted the doctrine of proportionality as a general criterion for judicial review. The analysis of proportionality, in doctrine, legislation, international treaties, and jurisprudence must be answered some essential questions whether the doctrine of proportionality is a principle of law and if so, what are its sources whether there is any compatibility of this principle with the rule of law or principles of a democratic society. Whether there can be any consecration and application of the principle of proportionality in the common law system. Accordingly, I will first argue the legal sources of proportionality, and then the doctrine of "proportionality and the rule of law" follow by the doctrine of "proportionality and democratic constitutionalism", to find out the compatibility of the doctrine of proportionality in the UK's legal system. The article also revealed that Proportionality is a general principle of law, meaning the notion of balance, justice, responsibility, and appropriateness of the measures taken by the State to the actual situation and the purpose of the law.

The principle is expressly laid down in EU documents, but also in the constitutions of other states in Europe. The socially constructed or jurisdictional regulation of the concept explains the wide range of concerns at the scientific level to determine its aspects. Hence, the courts given the responsibility of judicial review must analyze whether the decision undertaken by the state is proportionate: i.e. in equilibrium and sync. Courts ought to formulate an indefeasible and doctrinal method to assess proportionality, and until this is achieved, there will constantly be overlap amongst the traditional grounds of evaluation and the notion of proportionality, and cases would remain to be resolved in the current fashion of whichever doctrine is used. This article also expressed proportionality as a content element of the principle of justice because it implies the ideas of reasonableness, fairness, and tolerance. This is one of the important elements that the proportionality is increasingly required as a universal principle, enshrined in most contemporary legal systems, explicitly or implicitly governed by norms constituted and recognized national and international jurisdictions.

Bibliography

Bendor, A. L. (2015). How proportional is proportionality? *International Journal of Constitutional Law, 13(2)*, 530-544.

Chandrachud, A. (2013). Wednesbury reformulated: Proportionality and the supreme court of India. *Oxford University Commonwealth Law Journal, 13(1)*, 191-208.

Cohen-Eliya, M. &. (2011). Proportionality and the Culture of Justification. *The American Journal of Comparative Law, 59(2)*, 463-490.

Cohen-Eliya, M. &. (2013). *Proportionality and constitutional culture.* Cambridge: Cambridge University Press.

Endicott, T. (2014). Proportionality and incommensurability. Proportionality and the rule of law: Rights, justification, reasoning. 311-323.

Gilani, S. R. (2019). The significance of the doctrine of proportionality in the context of militant democracy to protect the freedom of expression. *BURA*, 432-456.

Gilani, S. R. (2020). Gilani, S. R. S., & RTHE LIMITATION CLAUSES ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS: THE ROLE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION (CJEU). *Journal of European Studies (JES), 36(2)*, 83-99.

Hamid, N. A. (2018). The study of the doctrine of proportionality in Malaysia. *Herald NAMSCA*, 1.

Himma, K. (2017). Law and morality. *Routledge.*, 111-129.

Jackson, V. C. (2014). Constitutional law in an age of proportionality. *Yale LJ*, 3094.

Kuhli, M. (2013). Power and Law in Enlightened Absolutism–Carl Gottlieb Svarez'Theoretical and Practical Approach. Rechtsgeschichte-Legal History. *Kuhli, M. (2013). Power and Law in*

Enlightened Absolutism–Carl Gottlieb Svarez'Theoretical and PraJournal of the Max Planck Institute for European Legal History, 2012-02.

Kuhli, M. (n.d.). Kuhli, M. (2013). Power and Law in Enlightened Absolutism–Carl Gottlieb Svarez'Theoretical and Practical Approach. Rechtsgeschichte-Legal History.

Lurie, G. (2020). Proportionality and the Right to Equality. *German Law Journal, 21(2)*, 174-196.

Möller, K. (. (2012). Proportionality: Challenging the critics. *International Journal of Constitutional Law, 10(3)*, 709-731.

Okonjo, J. (2015). Assessing the Impact of the Extraterritorial Provisions of the European Markets Infrastructure Regulation (EMIR) on Emerging Economies' OTC Derivatives Markets: A Doctrine of Proportionality Perspective. *Okonjo, J. (2015). Assessing the Impact of the Extraterritorial Provisions of the EuropeIndian J. Int'l Econ*, 231-249.

Porat, I. (2009). Some Critical Thoughts on Proportionality. *Springer, Dordrecht.*, 243-250.

Rivers, J. (2006). Proportionality and variable intensity of review. *The Cambridge Law Journal, 65(1)*, 174-207.

Sullivan, E. T. (2007). The doctrine of proportionality in a time of war. *Minn. J. Int'l L.*, 457.