

The Standard of Reasonableness in Fundamental Rights Adjudication under the Indian Constitution

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Abstract : In most constitutional democracies, courts have been the gatekeepers of fundamental rights. The task of determining whether a violation is in fact justified, therefore, is judicial. Any state action, legislative or administrative, has to be tested by the application of two standards - first, the action must be within the scope of the authority conferred by law and, second, it must be reasonable. If any action, within the scope of the authority conferred by law is found to be unreasonable, it will be struck down as unconstitutional or ultra vires. This paper seeks to analyse the varying standards of reasonableness adopted by the Supreme Court of India where there is a violation of fundamental rights by state action. This is sought to be done by scrutinising case laws and classifying the legality of the violation under one of three levels of judicial scrutiny—strict, intermediate, or weak. The paper concludes by proving that there is an irregularity in the standards adopted, thus resulting in undue discretionary power of the judiciary which strikes at the very concept of reasonableness and ultimately becomes arbitrary in nature. This conclusion is reached by the comparison of reasonableness review of fundamental rights in other jurisdictions such as the USA and Canada.

Keywords : constitutional law, judicial review, fundamental rights, reasonableness, India

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