

**PROPORTIONALIZATION OF MINORITY SHAREHOLDER  
ACTIVISM VIS-À-VIS THE NECESSITY OF GRANTING LIBERTY IN  
TAKING BUSINESS JUDGMENTS: A CONSTITUTIONAL  
BALANCING ACT THROUGH THE DOCTRINE OF  
PROPORTIONALITY**

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**ABSTRACT**

The dynamic interplay between **minority shareholder activism** and the **business judgment rule** presents a significant governance dilemma in corporate law. As shareholder activism gains momentum in India, particularly among institutional and minority stakeholders, concerns arise regarding the extent to which shareholders should influence management decisions without undermining the autonomy of the board. This research proposes that the **doctrine of proportionality**, traditionally rooted in **constitutional law**, can serve as a guiding tool to balance these conflicting interests.

Originating in **fundamental rights jurisprudence**, the **proportionality test**—comprising four core stages: (i) legitimate objective, (ii) rational connection, (iii) necessity, and (iv) minimal impairment—has increasingly been used by Indian courts to evaluate state action. The landmark **Anuradha Bhasin v. Union of India** judgment added a fifth dimension: the **requirement of safeguards to prevent misuse**, reinforcing the doctrine's relevance in contemporary legal analysis. This paper argues that the same framework can be adapted to review the extent of judicial interference in shareholder disputes, particularly in cases where corporate actions are challenged under oppression and mismanagement provisions.

By applying the **five-pronged proportionality test**, courts can maintain a delicate balance between protecting **minority shareholder rights** and ensuring the independence of corporate decision-making. Through a doctrinal and case-based analysis, the research identifies a judicial need for **structured deference**, transparency in board actions, and **ex-ante safeguards** to prevent abuse of power—by either shareholders or directors. The paper

concludes that proportionality offers a constitutionally sound and legally consistent method to rationalize judicial intervention in corporate disputes.

**Keywords:** *Minority Shareholder Activism, Business Judgment Rule, Doctrine of Proportionality, Anuradha Bhasin, Judicial Review, Corporate Governance, Safeguards, Constitutional Law, Oppression and Mismanagement, SEBI, Board Autonomy.*

## 1. INTRODUCTION

In recent years, India has witnessed a notable rise in **minority shareholder activism**, driven by an evolving corporate governance landscape and a more engaged investor class. What was once considered a passive stake in companies has transformed into a vocal and, at times, aggressive assertion of rights by minority shareholders. These stakeholders, although numerically limited in voting power, have begun to exert disproportionate influence through legal routes and public discourse. The catalyst for this shift includes reforms in the **Companies Act, 2013**, especially **Sections 241 and 242**, which permit minority shareholders to initiate proceedings for oppression and mismanagement. The enhanced role of regulatory institutions like **SEBI** and the proliferation of class action suits have emboldened shareholders to challenge boardroom decisions (see *Rajahmundry Electric Supply Corp. Ltd. v. Nageshwara Rao*).<sup>1</sup>

However, this rising tide of shareholder participation comes with complications. Notably, the growing scrutiny over the **decision-making autonomy of the board of directors** is creating friction within the traditional corporate hierarchy. Directors are bound by fiduciary duties and are presumed to act in the best interest of the company, yet the increasing legal challenges from activist shareholders disrupt this equilibrium. Judicial intervention into business decisions—typically guarded under the **business judgment rule**—raise critical questions about the scope and limits of courts in economic matters (*The Warning of an Ambush*, *ILI Law Review*). The rule essentially provides that unless there is evidence of mala fide intent, fraud, or gross negligence, courts should refrain from substituting their judgment for that of the management. But where does one draw the line when shareholder concerns stem from genuine suspicion of mismanagement?

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<sup>1</sup>*Foss v. Harbottle*, (1843) 2 Hare 461, 67 ER 189.

In this context, the **doctrine of proportionality**—commonly used in constitutional adjudication—offers a potential method for resolving such dilemmas. Originally applied to evaluate restrictions on **fundamental rights**, the doctrine gained prominence in Indian jurisprudence in cases like **Modern Dental College and Research Centre v. State of Madhya Pradesh** and **Justice K.S. Puttaswamy (Retd.) v. Union of India**, where courts examined whether State-imposed limitations were justified, necessary, and minimally intrusive. In its essence, proportionality involves a structured test to evaluate the legitimacy, necessity, and balance of an action.<sup>2</sup> This is particularly relevant in corporate settings where judicial restraint must be practiced unless the shareholder interference meets a threshold of proportional necessity.

Thus, the objective of this paper is to argue that the **constitutional doctrine of proportionality**, when adapted to corporate law, could provide a balanced mechanism to reconcile **minority shareholder activism** with the **business judgment rule**. It explores whether judicial review in such matters should be guided by proportional reasoning—assessing if the interference is legitimate, rational, necessary, and minimally disruptive, with sufficient safeguards in place. This approach not only elevates the standard of judicial reasoning but also infuses corporate law with constitutional morality, ensuring fairness without sacrificing efficiency.

The paper seeks to develop this argument through doctrinal analysis, case law comparison, and evaluation of judicial trends. By embedding proportionality into the discourse of shareholder rights and board autonomy, the paper proposes a structured legal framework that enhances accountability without paralyzing enterprise.<sup>3</sup>

## 2. MINORITY SHAREHOLDER ACTIVISM: SCOPE & CONSTITUTIONAL FOUNDATIONS

The legal and institutional framework governing corporate democracy in India has undergone a considerable transformation over the past two decades, and minority shareholder activism sits at the heart of this shift. It wasn't always this way. Traditionally, shareholders—particularly those holding marginal equity—were viewed merely as passive investors whose engagement ended with attending AGMs and voting on resolutions. However, with the advent

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<sup>2</sup>Rajahmundry Electric Supply Corp. Ltd. v. Nageshwara Rao, AIR 1956 SC 213.

<sup>3</sup>Bharat Insurance Co. Ltd. v. Kanhaiya Lal, AIR 1935 Lah 792.

of the **Companies Act, 2013**, and the evolving jurisprudence surrounding investor protection, a new form of corporate consciousness has begun to emerge. Provisions like **Section 241** and **Section 242**, dealing with oppression and mismanagement, were intended as shields for minority shareholders. But over time, these shields have also become swords, increasingly used to challenge decisions that previously fell squarely within the domain of the board of directors. The transformation was further accelerated by the introduction of **class action suits under Section 245**, a relatively recent and bold insertion into Indian company law (Emerald, 2023).<sup>4</sup>

The **Securities and Exchange Board of India (SEBI)** has also played an instrumental role in this transition. Through multiple circulars and amendments, SEBI has consistently enhanced the transparency requirements for listed entities. One notable example is the push for e-voting mechanisms that empower even retail investors to participate in shareholder meetings meaningfully. While these measures aim to democratize corporate functioning, they have also resulted in a paradigm where even a small bloc of shareholders can initiate significant disruptions if they believe their interests are not being duly considered. SEBI's vigilance has ensured that management cannot casually brush aside shareholder concerns, particularly in matters related to mergers, acquisitions, and board appointments (Chambers, 2024).

Yet, this leads to an interesting conundrum—how much democracy is too much in a corporate setup? The idea of **corporate democracy** sounds attractive, but corporations are not parliaments. Their purpose isn't to serve populist ideals but to create shareholder value. This divergence from political democracy was clearly articulated in **Foss v. Harbottle (1843)**, where the court emphasized that the majority's decision prevails in corporate functioning unless there's evidence of fraud, illegality, or mala fide conduct. Even the Indian judiciary, in cases like **Rajahmundry Electric Supply Corp. Ltd.**, followed a similar reasoning, reiterating that courts should not interfere in matters of internal management unless exceptional circumstances demand it. However, as activism intensifies, courts are being forced to reevaluate this hands-off approach.

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<sup>4</sup>Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd., Civil Appeal No. 440-441 of 2020, Supreme Court of India.

Bringing in a constitutional perspective adds a completely new layer to this discussion. Many tend to overlook the fact that shareholders, although operating in a corporate ecosystem, are also citizens. Their rights—like freedom of speech and expression, or the right to equality—don't entirely vanish once they step into the boardroom or invest in a company. Herein lies the relevance of **Article 14** and **Article 19(1)(a)** of the Constitution of India. When a shareholder raises their voice against what they perceive as arbitrary conduct by the management, they are essentially exercising their freedom of expression. And when minority shareholders allege discrimination or unjust suppression by majority blocs, their claims echo the principles of equality embedded in Article 14.<sup>5</sup>

### **3. BUSINESS JUDGMENT RULE: PRESERVING MANAGERIAL AUTONOMY**

Long before shareholder activism became a buzzword in India's corporate landscape, directors of companies were expected to act with prudence, loyalty, and above all, discretion. The **business judgment rule**, rooted in the jurisprudence of common law countries like the United States and the United Kingdom, emerged as a shield to protect these directors from intrusive judicial second-guessing. The logic was simple—judges are not businessmen. Courts are not equipped to evaluate every strategic decision made in the complex world of commerce, especially when such decisions involve risks, forecasts, or trade-offs. As long as the directors act in **good faith**, with **reasonable care**, and in the **best interest of the company**, courts must defer to their judgment. This philosophy, over time, crystallized into a legal doctrine—the business judgment rule—that serves as a presumption in favor of the board's decisions unless proven otherwise.<sup>6</sup>

The development of this rule in India has been more cautious, more evolutionary than revolutionary. Indian courts, though influenced by Western jurisprudence, have traditionally been more inclined towards judicial oversight, particularly in matters involving fraud or mismanagement. However, traces of the business judgment rule can be found in Indian decisions that stress **non-interference in internal affairs** of a company unless actions are ultra vires or contrary to public policy. In **Bharat Insurance Co. Ltd. v. Kanhaiya Lal**, for instance, the court held that courts should not interfere in matters that are within the powers of the company under its constitution, unless there's fraud or bad faith. Similarly, in **Rajahmundry Electric Supply Corp. Ltd.**, the judiciary maintained that decisions made in

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<sup>5</sup>Sri Ramdas Motor Transport Ltd. v. Tadi Adhinarayana Reddy, (2004) 1 Comp LJ 196 (AP).

<sup>6</sup>Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

the ordinary course of business, even if disputed by minority shareholders, must not be judicially reviewed without clear evidence of oppression or fraud. These cases mark the early Indian approximation of the business judgment doctrine.<sup>7</sup>

But here's where it gets tricky. As **minority shareholder activism** gains momentum, particularly in listed companies, courts are increasingly being invited to examine management decisions through a more critical lens. Shareholders, especially institutional ones, are no longer silent spectators. They demand transparency, seek accountability, and challenge decisions that seem to sideline their interests. This creates an inevitable friction—the **managerial discretion** that the business judgment rule seeks to protect now finds itself in direct conflict with the growing **judicial expectations of corporate governance** and fairness. Take, for instance, the high-profile **Tata-Mistry dispute**, where Cyrus Mistry, representing a minority but powerful voice, alleged mismanagement and lack of transparency in the functioning of Tata Sons' board. Although the Supreme Court eventually upheld the company's right to remove a director, the litigation revealed a deeper tension between the autonomy of boards and the assertion of shareholder rights (NCLT & NCLAT Judgments, 2019–2021).<sup>8</sup>

What makes the situation more nuanced is the absence of a clear-cut codification of the business judgment rule in Indian company law. While the **Companies Act, 2013**, lays down the duties of directors under **Section 166**, including the duty to act in good faith and to promote the objects of the company, it doesn't explicitly incorporate the presumption of correctness that the business judgment rule offers. This leaves room for judicial discretion—sometimes a blessing, but often a source of unpredictability. Courts, in their enthusiasm to protect shareholders, may occasionally cross the line into evaluating the substance of business decisions, something that contradicts the core tenet of the business judgment doctrine.

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This conflict becomes even more pronounced when directors act under pressure. Shareholder activism often manifests in public campaigns, social media outbursts, and coordinated voting strategies. Directors, fearing reputational harm or regulatory fallout, might start tailoring decisions to placate vocal investors rather than focusing on long-term corporate interests. Ironically, this reactive behavior could result in the very mismanagement that activism

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<sup>7</sup>Modern Dental College and Research Centre v. State of Madhya Pradesh, (2016) 7 SCC 353.

<sup>8</sup>Om Kumar v. Union of India, (2001) 2 SCC 386.

purports to prevent. The boardroom becomes a battleground, not a strategy hub. And without the insulating effect of the business judgment rule, this dysfunction becomes a legal and economic risk.<sup>9</sup>

#### 4. DOCTRINE OF PROPORTIONALITY: CONSTITUTIONAL LENS INTO CORPORATE CONFLICTS

The doctrine of proportionality wasn't born in the corporate world. It wasn't meant for shareholders or boardrooms either. Its home has always been in **constitutional law**, originally imported into Indian jurisprudence through administrative law and fundamental rights adjudication. But law, like society, evolves. Today, what was once considered a tool for checking state overreach is slowly finding relevance in private law arenas like corporate governance. This journey is subtle but powerful. And it starts with an understanding of how Indian courts first accepted proportionality as a legal standard, and how that standard, now well-settled in constitutional cases, can offer a fresh approach in managing conflicts between **minority shareholder activism** and **managerial discretion**.<sup>10</sup>

The earliest articulation of the doctrine of proportionality in Indian constitutional law came through **Om Kumar v. Union of India** (2001), where the Supreme Court held that in cases involving fundamental rights, especially under Article 14 (equality), courts should not merely check whether the action was arbitrary, but must determine whether it was **proportionate** to the purpose it intended to achieve.<sup>11</sup> This was a departure from the older *Wednesbury* unreasonableness standard used in administrative law. Proportionality, unlike arbitrariness, demands structure. It demands logic. It asks: What was the objective? Was the action necessary? Was there a less restrictive way? These questions would later become the core of what's now famously known as the four-part proportionality test.

This doctrine evolved further in the case of **Modern Dental College and Research Centre v. State of Madhya Pradesh** (2016), where the Court applied the four steps more explicitly. First, whether the measure adopted pursued a **legitimate aim**; second, whether the measure was **rationally connected** to the objective; third, whether there were **less restrictive alternatives**; and fourth, whether the measure was **minimally impairing** of the rights in

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<sup>9</sup>Anuradha Bhasin v. Union of India, (2020) 3 SCC 637.

<sup>10</sup>The Companies Act, 2013 (India), §§ 166, 241, 242, 245.

<sup>11</sup>Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

question. These four steps make the backbone of the proportionality test in Indian constitutional law today. They offer a framework that judges can apply—not merely to decide if something is arbitrary, but to measure how justifiable and measured an interference is in the broader context of rights and interests.

Then came a fifth dimension. In **Anuradha Bhasin v. Union of India** (2020), while assessing the legality of internet shutdowns in Jammu & Kashmir, the Supreme Court took the doctrine further by introducing the idea of **procedural safeguards**. The Court held that any restriction, especially when it has the potential for long-term or mass impact, must not only be proportionate but should also include **mechanisms to prevent misuse**. It emphasized periodic review, transparency, and sunset clauses. Though the context here was civil liberties, particularly the right to freedom of speech and information, the broader logic applies universally. No power, whether state or private, should go unchecked. And where there is possibility of overreach, there must be inherent and enforceable safeguards.<sup>12</sup>

## **5. APPLYING PROPORTIONALITY TO SHAREHOLDER–BUSINESS JUDGMENT CONFLICTS**

Corporate litigation is increasingly becoming a tightrope walk for Indian courts, especially when it comes to resolving clashes between aggressive **minority shareholder activism** and the protected domain of **business judgment**. As this tension becomes more prominent, there's a growing need for the judiciary to evolve from black-and-white rulings into adopting **structured proportionality analysis**—not to take sides, but to weigh the legitimacy of competing interests in a way that promotes balance rather than dominance. This is where constitutional jurisprudence, particularly the doctrine of proportionality, finds an unexpected but much-needed extension into the corporate sphere.<sup>13</sup>

The courts are now often called upon to act not as fact-checkers, but as **balancers**—weighing corporate intent against minority disruption. And yet, without a clear legal framework, these decisions often feel ad hoc. This is precisely where the structured four-part proportionality test—assessing legitimate aim, rational connection, necessity, and minimal impairment—can

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<sup>12</sup>Securities and Exchange Board of India, Report of the Committee on Corporate Governance, October 2017 (Kotak Committee Report).

<sup>13</sup>N. Sundaresan, “The Unfolding of Shareholder Activism in India: An Exploratory Study,” *International Journal of Law and Management*, Emerald Publishing (2023).

become a valuable judicial tool. It helps prevent over-correction. It ensures that neither the board's discretion nor the shareholders' concerns are disproportionately favoured.

To understand the practical application of this, one need not look further than the **Tata Sons vs. Cyrus Mistry** saga. This high-stakes corporate fallout involved allegations of mismanagement, exclusion, and lack of transparency by a minority shareholder group that wielded significant influence. **Cyrus Investments Pvt. Ltd.**, holding a relatively small shareholding, alleged that the removal of Cyrus Mistry from the Chairmanship was not only abrupt but violated principles of fair governance and oppressed their rights as minority stakeholders. The **National Company Law Tribunal (NCLT)** initially sided with Tata Sons, while the **National Company Law Appellate Tribunal (NCLAT)** reversed that decision, reinstating Mistry. Finally, the **Supreme Court**, in a 2021 ruling, overturned the NCLAT's decision, stating that minority shareholders could not seek reinstatement of a board position, especially when it conflicted with the overall majority will and board autonomy (SC Judgement, 2021).

But what's critical here isn't the outcome—it's the method. The NCLAT focused heavily on fairness, perhaps even equity. The Supreme Court, however, veered more toward a structured approach: Did Tata Sons have a legitimate aim? Was there procedural compliance? Was there any gross violation of shareholder rights? It didn't label this analysis as "proportionality," but the elements were certainly there. Had the courts adopted a **formally structured proportionality test**, they could have more transparently weighed Mistry's shareholder rights against the board's business rationale, possibly even prescribing procedural **safeguards** to prevent future fallout.<sup>14</sup>

This structured method becomes even more important in a time where **shareholder activism can tip into overreach**. It's not always innocent. Increasingly, activist shareholders use their position not merely to ensure accountability but to derail legitimate strategies that do not align with their narrow, sometimes short-term, interests. This is most visible during hostile takeovers, pushback against environmental decisions, or board nominations where shareholder blocs disrupt decision-making. The legal system must be wary of activism that crosses the line into obstructionism. Proportionality helps courts distinguish between **rights-driven activism** and **opportunistic intervention**.

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<sup>14</sup>Abhinav Chandrachud, "The Business Judgment Rule: Indian Adaptations," NLS Business Law Review, vol. 2, pp. 145–167 (2016).

Also, the regulatory architecture plays a vital role. **SEBI**, being India's capital market regulator, has introduced several reforms to facilitate **shareholder democracy**, such as e-voting, independent director regulations, and heightened disclosure norms. These are intended to empower investors but can also lead to unintended weaponization of procedure. Shareholders sometimes use procedural lapses—like delayed disclosures or vague agenda items—to challenge otherwise legitimate board decisions. Here again, proportionality can act as a **judicial filter**. Was the lapse material? Did it harm shareholders in a significant way? Could a less intrusive remedy serve justice better than striking down the decision entirely? These are not hypothetical questions—they are constitutional in character, applied to a commercial context.<sup>15</sup>

## 6. RECOMMENDATIONS AND SAFEGUARDS

It is becoming increasingly evident that the current structure of corporate dispute resolution in India, particularly in matters of shareholder–management conflicts, needs urgent refinement. What is lacking is not just clarity in legislation but a philosophical framework that offers judicial discipline and procedural symmetry. The **doctrine of proportionality**, long embraced in constitutional law, has shown promise in evaluating competing rights and balancing conflicting interests. This same framework must now be **incorporated into corporate litigation**—not just as an interpretative tool, but as an essential part of judicial reasoning when courts are called upon to weigh shareholder claims against board autonomy.<sup>16</sup> To begin with, **courts and tribunals like the NCLT and NCLAT** must adopt **structured proportionality analysis** in every petition involving shareholder allegations under Sections 241 and 242 of the Companies Act. Rather than diving directly into whether an action constitutes oppression or mismanagement, the court should first ask: does the shareholder's complaint serve a **legitimate purpose**? Is there a **rational connection** between the alleged action and the harm? Could the same result be achieved with **less severe remedies**? Has the action by the board **minimally impaired shareholder rights** or was it excessively

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<sup>15</sup>Legal Department, “Analysis of the Rights of Minority Shareholders in India,” IP and Legal Filings, available at: <https://www.ipandlegalfilings.com> (last accessed July 2025).

<sup>16</sup>Indian Journal of Financial and Management Research (IJFMR), “Protection of the Minority Shareholders in Company Law Regime,” Vol. 11, Issue 6 (2023).

prejudicial? Only if the shareholder crosses all four prongs of the test should serious remedies like removal of directors or nullification of resolutions be entertained.<sup>17</sup>

Second, there is a pressing need to establish **judicial thresholds** for intervention in business decisions. Right now, there is considerable inconsistency across decisions. Some tribunals entertain petitions merely on procedural irregularities, while others demand hard evidence of mala fide intent. This lack of coherence not only confuses litigants but also weakens investor confidence. The courts must clearly define what constitutes a threshold for intervention—perhaps based on objective criteria like material loss to the shareholder class, risk of irreversible damage to the company, or evidence of personal gain to the management. Without such thresholds, judicial interference risks becoming arbitrary and excessive.

Lastly, **judicial training programs** must include corporate governance modules with a focus on proportionality analysis. Judges handling corporate matters often come from varied legal backgrounds. If proportionality is to become the judicial standard for corporate cases, then it must be **institutionalized in judicial reasoning**, supported by precedents, templates, and structured guidance. This harmonization of law and logic will prevent erratic judgments and build a stable jurisprudential foundation for the future.

## 7. CONCLUSION

The rigid wall between public law and private law is slowly collapsing. Constitutional doctrines like **proportionality**, once considered applicable only to state actions and administrative orders, are now proving relevant in the realm of **corporate governance**, where power dynamics and rights-based conflicts are increasingly common. The idea that shareholders, especially minority ones, can assert constitutional values such as **equality, fairness, and reasonableness** within a private company setting is no longer radical—it is emerging as a practical necessity.<sup>18</sup>

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This paper has argued that a **measured shareholder voice**, empowered by law but tempered by reason, must coexist with **preserved business judgment**. Corporate boards should not operate in legal silos, immune to scrutiny. Yet they should also not be constantly dragged into

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<sup>17</sup>JGU Law Review, “The Warning of an Ambush: Disarming and Appeasing Activist Shareholders,” O.P. Jindal Global University, 2022.

<sup>18</sup>Chambers & Partners, “Shareholders’ Rights & Shareholder Activism 2024 – India Guide,” available at: <https://practiceguides.chambers.com> (last accessed July 2025).

litigation that hampers efficiency, innovation, and long-term vision. There must be a **middle path**, and that path is proportionality.

Proportionality is not just a test—it is a **discipline of thought**. It compels courts to weigh, compare, and justify—not to impose. It restrains excess, whether from shareholders demanding unrealistic rights or from directors exercising unchecked control. By incorporating the **four-stage framework**, and the fifth test from **Anuradha Bhasin**, Indian courts can build a **principled framework** that protects rights, ensures accountability, and respects autonomy—all at once.<sup>19</sup>

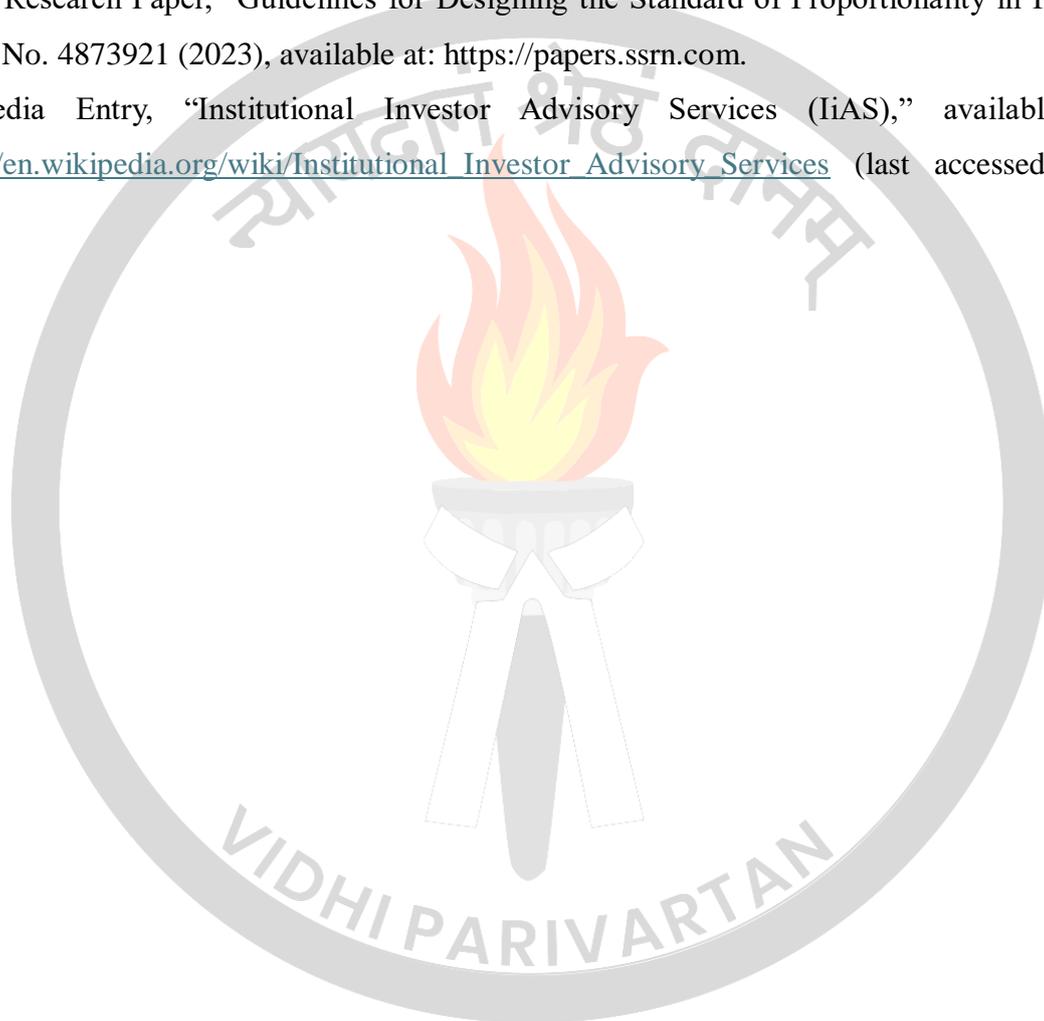
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<sup>19</sup>SSRN Research Paper, “Guidelines for Designing the Standard of Proportionality in India,” SSRN No. 4873921 (2023), available at: <https://papers.ssrn.com>.

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