MASTER STUDY MATERIAL: PAPER 2 — INDIAN CONSTITUTIONAL LAW: THE NEW CHALLENGES

University of Mumbai — LL.M. Semester 1 (Foundation Course)

Complete 9-Theme Compendium (2015 – 2026 Examination Architecture)

> ***Important Note:*** *This compendium is the verbatim, unabridged compilation of all 9 thematic study material modules for Paper 2. Every statutory section, judicial authority, constitutional provision, and model answer blueprint has been compiled programmatically on disk with zero truncation and zero alteration.*

Master Table of Contents

- Theme 1: Federalism, Centre-State Relations & Creation of New States
- Theme 2: "State" under Article 12, Privatization & Economic Liberalization
- Theme 3: Right to Equality, Affirmative Action & Gender Justice (Articles 14, 15, 16)
- Theme 4: Freedom of Speech and Expression, Media & Emerging Technologies (Article 19)
- Theme 5: Secularism, Religious Freedom & Minority Educational Rights (Articles 25–30)
- Theme 6: Right to Education & Commercialization of Education (Article 21A)
- Theme 7: Independence of Judiciary, Judicial Appointments, Review & Activism
- Theme 8: Election Commission, Electoral Reforms & Grass-Root Democracy
- Theme 9: Fundamental Rights, Directive Principles, Preventive Detention & Separation of Powers

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Paper 2: Indian Constitutional Law – The New Challenges

Master Study Material: Theme 1

THEME 1: Federalism, Centre-State Relations & Creation of New States

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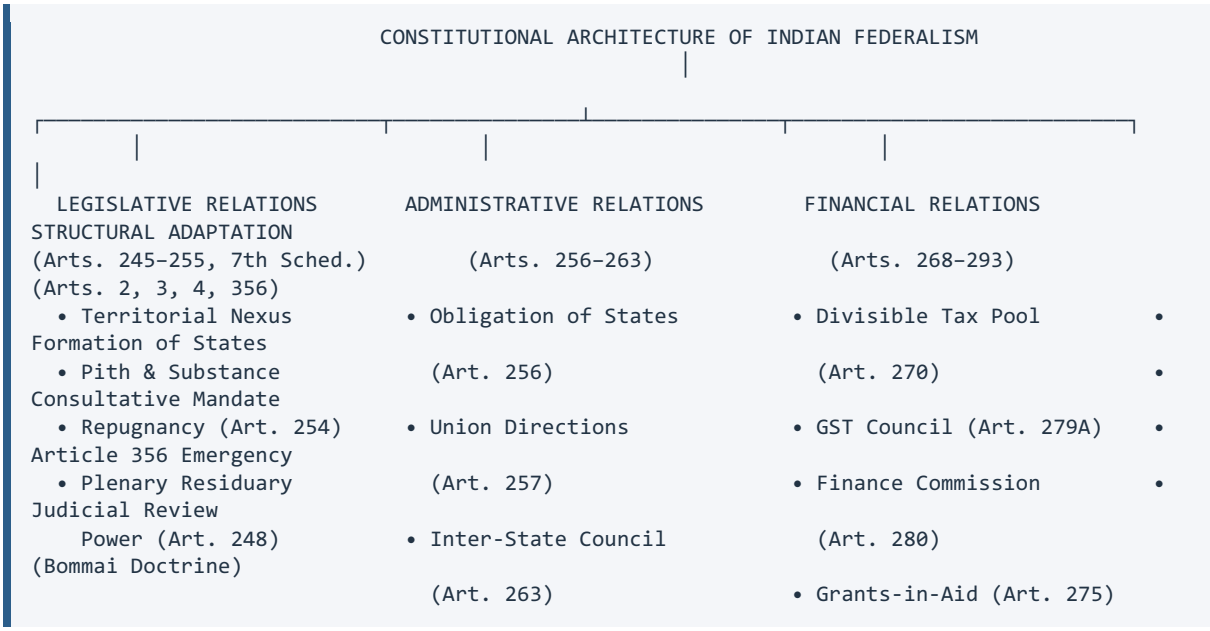
PART 1: Exhaustive Syllabus & Thematic Scope

The concept of Federalism represents one of the most dynamic, intensely litigated, and evolving structural doctrines of Indian Constitutional Law. Far from being a static or rigid institutional architecture, Indian federalism is a complex, multi-tiered constitutional organism designed to balance continental diversity, regional aspirations, national integrity, and socioeconomic transformation.



Detailed Syllabus Breakdown:

1. **The Nature and Typology of Indian Federalism:**
    - Theories of federalism: Classical Federalism (K.C. Wheare's "Quasi-Federal" thesis), Cooperative Federalism (Granville Austin), Asymmetric Federalism, Bargaining Federalism (Morris-Jones), and Fiscal Federalism (*Jindal Stainless Ltd. v. State of Haryana*, 2017 - 9 Judges; *Automobile Transport Rajasthan*, 1962).
    - Dr. B.R. Ambedkar’s constitutional vision: "A Union of States" under Article 1; why the drafting committee preferred "Union" over "Federation" (an indestructible Union formed not by agreement among sovereign units, but as an administrative and sovereign necessity).
    - Judicial characterization: From *State of West Bengal v. Union of India* (1963) to *S.R. Bommai v. Union of India* (1994) and *NCT of Delhi v. Union of India* (2018, 2023). Federalism as part of the Basic Structure of the Indian Constitution.
2. **Legislative Relations and Distribution of Sovereign Powers:**
    - Territorial limits of legislative power (Article 245) and the Doctrine of Territorial Nexus (*Tata Iron & Steel Co. v. State of Bihar*, *Wallace v. CIT*).
    - Subject-matter distribution under Article 246 and the Seventh Schedule (Union List - List I, State List - List II, Concurrent List - List III).
    - Harmonious construction and the Doctrine of Pith and Substance (*Prafulla Kumar Mukherjee v. Bank of Commerce, Khulna*; *State of Bombay v. F.N. Balsara*).
    - Repugnancy between Union and State laws under Article 254: Operational parameters of Article 254(1), the Presidential Assent exception under Article 254(2), and the requirement of identical subject matter in the Concurrent List (*Deep Chand v. State of U.P.*; *M. Karunanidhi v. Union of India*; *Forum for People's Collective Efforts v. State of West Bengal*).
    - Residuary powers of legislation (Article 248, Entry 97 List I) (*Union of India v. H.S. Dhillon*, 1971 - 7 Judges) and Parliamentary expansion during national exigencies (Articles 249, 250, 252, 253).
3. **Administrative Relations & Inter-Governmental Coordination:**

- Compliance with Union laws and executive directions (Articles 256 and 257); the constitutional sanction of Article 365.
- Delegation of executive functions between Union and States (Articles 258 and 258A).
- All-India Services (Article 312) as an instrument of national unity and administrative standardization.
- Inter-State coordination machinery: Inter-State Council under Article 263, Zonal Councils under the States Reorganisation Act 1956, and River Water Dispute Tribunals under Article 262 (Inter-State River Water Disputes Act 1956).

4. **Fiscal Federalism and Resource Allocation:**
    - Constitutional division of taxation powers; the 80th and 101st Constitutional Amendments.
    - Inter-state trade and taxing powers under Part XIII: The landmark 9-Judge Bench ruling in *Jindal Stainless Ltd. v. State of Haryana* (2017) 12 SCC 1 upholding State taxing autonomy.
    - Finance Commission (Article 280) and horizontal/vertical devolution; the tension between unconditional devolution and Centrally Sponsored Schemes (CSS).
    - Borrowing powers of States under Article 293 and statutory conditionalities.
5. **Breakdown of Constitutional Machinery (Article 356):**
    - The genesis and intent of Article 356: Dr. Ambedkar’s hope of it remaining a "dead letter".
    - Proclamation of President's Rule: Scope of "failure of constitutional machinery", Governor's report, Parliamentary approval, and duration.
    - Legislative and executive consequences: Power of Parliament to exercise State legislative powers (Article 357).
    - The revolutionary paradigm shift in *S.R. Bommai v. Union of India* (1994): Justiciability of Presidential proclamation, standards of judicial review, mandatory requirement of the legislative floor test, and the power of the Supreme Court to revive dissolved assemblies (*Rameshwar Prasad*, 2006; *Nabam Rebia*, 2016).
6. **Creation, Admission, and Reorganisation of States:**
    - Articles 2, 3, and 4 of the Constitution: Admission vs. formation of new states.
    - The anatomy of Article 3: Alteration of areas, boundaries, and names.
    - Procedural prerequisites: Presidential recommendation, reference to the concerned State Legislature, and the consultative (non-binding) nature of State legislative opinions (*Babulal Parate v. State of Bombay*, 1960).
    - Cession of Indian territory to foreign powers: Why Article 3 does not permit cession and the mandatory requirement of Constitutional Amendment under Article 368 (*In Re: Berubari Union*, 1960) vs. boundary demarcation (*Maganbhai Ishwarbhai Patel*, 1969).
    - Reorganisation of Jammu & Kashmir: The constitutional validity of reorganising a State into Union Territories under Article 3 during President’s Rule (*In Re Article 370 of the Constitution*, 2023).
7. **The Office of the Governor and Contemporary Federal Frictions:**
    - Constitutional position of the Governor under Articles 153–163: Dual role as constitutional head of the State and agent/representative of the Union.
    - Assent to State Bills under Article 200: The limits of executive discretion; the doctrine that the Governor cannot sit indefinitely on bills ("shall declare... as soon as possible") (*State of Punjab v. Principal Secretary to the Governor of Punjab*, 2023).

PART 2: Complete PYQ Question Bank (2015 – 2026)

All eleven previous years' examination questions mapped to Theme 1 are reproduced below verbatim with their year, question number, and mark distribution:

Year & Session	Question Identifier	Verbatim Examination Question Text	Prescribed Marks
June 2024	Q.1	Explain fully, the principle of "Federalism" embodied in the Constitution of India and the relationship of trust and faith between Centre and States.	**25 Marks**
2023	Q.4	Explain fully, the principle of "Federalism" embodied in the Constitution of India and the emerging dynamics of Centre-State relations.	**25 Marks**
2022	Part B – Q.1	Success of India as a federal country depends not just on the harmonious relationship between Centre and the States but also between States. Explain in detail with recent developments.	**10 Marks**
2019	Q.3	Explain fully, the principle of 'Federalism' embodied in the Constitution of India and the relationship of trust and faith between Centre and States.	**25 Marks**
2019	Q.5	Discuss in detail about "President's rule" under Article 356 and his legislative powers.	**25 Marks**
2018 (Set A)	Q.6(a)	Creation of new States.	**12.5 Marks**
2018 (Set B)	Q.6(b)	Formation of new States.	**12.5 Marks**
2016	Q.7(a)	Federalism.	**12.5 Marks**
2016	Q.7(d)	Formation of new States.	**12.5 Marks**

2015 (Set A)	Q.8	Explain fully, the principle of 'Federalism' embodied in the Constitution of India and relationship of trust and faith between Centre and States.	**25 Marks**
2015 (Set B)	Q.6	Explain fully, the principle of "Federalism" in the Constitution of India and relationship of trust and faith between Centre and State.	**25 Marks**

PART 3: Foundational Legal Framework & Constitutional Anatomy

1. The Nomenclature and Nature of the Polity: Article 1

- **Textual Precision:** Article 1(1) declares: *"India, that is Bharat, shall be a Union of States."*
- **Constituent Assembly Debates (CAD):** When drafting Article 1, Dr. B.R. Ambedkar explicitly clarified why the term "Union" was selected over "Federation":
  8. The Indian federation is not the result of an agreement or compact among sovereign states (unlike the United States of America).
  9. The constituent states have no right or freedom to secede from the Union. The federation is a Union because it is indestructible.
- **Indestructible Union with Destructible Units:** The constitutional architecture establishes an indestructible Union consisting of destructible units, because Parliament has plenary power under Article 3 to redraw the internal map of India without the consent of the constituent States.

2. Admission, Establishment, and Reorganisation of States: Articles 2, 3, and 4

- **Article 2 (Admission or Establishment of New States):** Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit. This applies primarily to territories not previously part of India (e.g., the admission of Sikkim via the 35th and 36th Constitutional Amendments in 1974–1975).
- **Article 3 (Formation of New States and Alteration of Areas, Boundaries or Names of Existing States):**
  - Parliament may by law:
    - (a) Form a new State by separation of territory from any State or by uniting two or more States or parts of States;
    - (b) Increase the area of any State;
    - (c) Diminish the area of any State;
    - (d) Alter the boundaries of any State;
    - (e) Alter the name of any State.
  - **Procedural Safeguards (Provisos to Article 3):**

10. *Presidential Recommendation:* No Bill for this purpose can be introduced in either House of Parliament except on the recommendation of the President.
11. *Reference to State Legislature:* Where the proposal contained in the Bill affects the area, boundaries, or name of any of the States, the Bill must be referred by the President to the Legislature of that State for expressing its views within a specified period or extended period.
12. *Non-Binding Nature:* The opinion expressed by the State Legislature is purely consultative and has no binding effect on Parliament or the President (*Babulal Parate v. State of Bombay*, 1960).

- **Article 4 (Supplemental, Incidental, and Consequential Matters):**
  - Laws made under Articles 2 and 3 must contain necessary provisions for amending the First Schedule (list of States and UTs) and Fourth Schedule (allocation of seats in the Rajya Sabha).
  - **Article 4(2) Deeming Clause:** Declares that no such law shall be deemed to be an amendment of the Constitution for the purposes of Article 368. Thus, a state can be reorganized, bifurcated, or renamed by a **simple majority** in Parliament.

3. Legislative Distribution and Doctrines: Articles 245–254

- **Territorial Nexus (Article 245):** Parliament makes laws for the whole or any part of India; State Legislatures make laws for the State. A State law can have extraterritorial operation only if there is a real and substantial nexus between the object and the legislating State (*State of Bombay v. R.M.D. Chamarbaugwala*, 1957).
- **The Three Legislative Lists (Article 246):**
  - *List I (Union List):* 97 entries (defence, foreign affairs, atomic energy, banking, interstate commerce). Exclusive jurisdiction of Parliament.
  - *List II (State List):* 66 entries (public order, police, public health, local government, agriculture, land). Exclusive jurisdiction of State Legislatures.
  - *List III (Concurrent List):* 47 entries (criminal law, civil procedure, marriage, contracts, economic planning, education). Shared legislative competence.
- **Doctrine of Pith and Substance:** Where an enactment substantially falls within a subject assigned to the legislating legislature, incidental encroachment into another list will not invalidate it (*F.N. Balsara*, 1951).
- **Doctrine of Repugnancy (Article 254):**
  - *Article 254(1):* If any provision of a State law is repugnant to any provision of a law made by Parliament on a Concurrent List subject, the Parliamentary law prevails, and the State law is void to the extent of the repugnancy.
  - *Article 254(2) Exception:* If a State law on a Concurrent List entry is reserved for the consideration of the President and receives Presidential assent, the State law prevails in that State despite repugnancy with an earlier Union law.
  - *Proviso to Article 254(2):* Parliament retains the sovereign power to enact at any time subsequent legislation adding to, amending, varying, or repealing the State law so assented to.

4. Emergency Powers: Article 356 (President's Rule)

- **Constitutional Threshold:** If the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be

carried on in accordance with the provisions of the Constitution, the President may issue a proclamation.

- **Effects of Proclamation:**
  - Executive power of the State is assumed by the President (exercised through the Governor).
  - Powers of the State Legislature are declared exercisable by or under the authority of Parliament (Article 356(1)(b) & Article 357).
  - High Court powers **cannot** be assumed or suspended (Article 356(1) proviso).
- **Parliamentary Scrutiny:** The proclamation must be laid before both Houses of Parliament and expires after two months unless approved by resolutions of both Houses. Once approved, it continues for six months at a time, up to a maximum ceiling of three years (subject to Article 356(5) election/emergency conditions after one year).

5. Inter-State Institutions and Conflict Resolution Machinery

- **Article 262 & Inter-State Water Disputes:** Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution, or control of the waters of any inter-state river or river valley, and exclude the jurisdiction of all courts, including the Supreme Court.
- **Article 263 (Inter-State Council):** Established by Presidential order to inquire into disputes, investigate subjects of common interest, and make recommendations for better coordination of policy and action.
- **Article 279A (GST Council):** Established under the 101st Constitutional Amendment. Represents a joint constitutional forum for the Union and States with a weighted voting mechanism (1/3rd Union, 2/3rds States; 3/4th majority required for decisions).

PART 4: Landmark & Contemporary Case Law Matrix

Case Name & Citation	Bench Strength & Year	Core Constitutional Issue	Ratio Decidendi & Legal Principles	Verbatim / Key Observation	Application in Exams
State of West Bengal v. Union of India AIR 1963 SC 1241	6 Judges (1963)	Whether Parliament has legislative competence under the Coal Bearing Areas Act to acquire coal-bearing lands vested in a State Government.	The Indian Constitution is not a true federation in the classical sense. Sovereign power is split, but the Union possesses overwhelming supremacy. States do not possess sovereign immunity against Central acquisition.	*"The Constitution of India is not true to any traditional pattern of federation... It does not establish a dual polity in the sense of two equal sovereign authorities."*	Baseline authority for the "Unitary Bias" and asymmetric distribution of sovereignty.

S.R. Bommai v. Union of India (1994) 3 SCC 1	9 Judges (1994)	Scope and justiciability of Presidential proclamation under Article 356; whether Federalism and Secularism are basic structure features.	1. Federalism is part of the **Basic Structure**. 2. Proclamation under Article 356 is subject to **judicial review**. 3. Satisfaction of the President must be based on objective, relevant material. 4. Floor of the Assembly is the only constitutional forum to test majority. 5. Courts can revive dissolved legislative assemblies if the proclamation is held invalid.	*"Federalism in the Indian Constitution is not a matter of administrative convenience, but one of the most essential basic features... Democracy and federalism are essential parts of our constitutional scheme."*	Mandatory foundation for any question on Article 356 and the Basic Structure of Federalism.
Kuldip Nayar v. Union of India (2006) 7 SCC 1	5 Judges (2006)	Whether deletion of the domicile/residence requirement for Rajya Sabha candidates violates the federal principle.	Indian federalism is sui generis and asymmetric. The Rajya Sabha does not represent states on a basis of strict equal representation (unlike the US Senate). Removal of residence requirement does not destroy federalism.	*"India is not a federal State in the traditional sense of the term... The nature of federalism in the Indian Constitution has to be understood in the context of India's unique history."*	Demonstrates the non-classical, flexible character of Indian bicameralism and federalism.
Govt. of NCT of Delhi v. Union of India (2018) 8 SCC 501	5 Judges (2018)	Executive and legislative balance between the elected Government of Delhi and the Lieutenant Governor (LG) under Article 239AA.	Formulated the doctrines of **Collaborative Federalism**, **Pragmatic Federalism**, and **Constitutional Morality**. The LG is bound by the aid and advice of	*"The concept of collaborative federalism expresses the need for cooperation and coordination between the*	Leading authority on modern executive federalism, constitutional morality, and cooperative dynamics.

			the Council of Ministers except in matters explicitly excluded (police, public order, land).	*Centre and the States... Federalism is an organic principle of governance."*	
Govt. of NCT of Delhi v. Union of India (2023) 9 SCC 1	5 Judges (2023)	Control over civil servants and administrative services (Entry 41 List II) in the National Capital Territory.	Articulated the **Triple Chain of Democratic Accountability**: (1) Civil servants are accountable to the Cabinet; (2) Cabinet is accountable to the Legislature; (3) Legislature is accountable to the Electorate. Denying service control severs this chain and destroys representative democracy.	*"A constitutional court must interpret the Constitution in a manner that fosters democratic governance and preserves federal principles. The triple chain of accountability is the lifeline of democracy."*	Crucial for questions on executive federalism, democratic accountability, and civil service neutrality.
Jindal Stainless Ltd. v. State of Haryana (2017) 12 SCC 1	9 Judges (2017)	Validity of State entry tax enactments; interplay between State taxing power under List II and freedom of inter-state trade under Article 301.	1. States possess sovereign, non-subordinate taxing powers under List II. 2. Non-discriminatory taxes levied by States do not violate Article 301. 3. Overruled the strict compensatory tax doctrine of *Automobile Transport*, vindicating State fiscal autonomy in India's federal structure.	*"Taxation is an essential attribute of sovereignty... In a federal system, States must possess financial viability and taxing autonomy to fulfill their constitutional mandates."* (Thakur CJ)	Locus classicus 9-Judge Constitution Bench precedent on fiscal federalism, state taxing autonomy, and inter-state commerce.
State of Punjab v. Principal Secretary to	3 Judges (2023)	Scope of Governor's powers under Article 200; whether Governor	1. Governor is a symbolic constitutional head and cannot	*"The Governor cannot be at liberty to keep Bills pending*	Indispensable contemporary authority on Article 200,

Governor of Punjab (2023) INSC 1008		can sit on Bills indefinitely.	veto or derail elected legislative authority. 2. **The Governor has NO "pocket veto" or absolute veto under Article 200.** The constitutional phrase "shall declare" mandates positive, timely action; sitting indefinitely on a Bill passed by the elected Legislature is unconstitutional. 3. If withholding assent, the Governor **must mandatorily return the Bill to the House "as soon as possible"** under the first proviso with a message for reconsideration. 4. If the House passes the Bill again, the Governor **cannot withhold assent**.	*indefinitely. A constitutional functionary must act within the four corners of constitutional morality and democratic legitimacy."* (Chandrachud CJ)	confirming that the Governor possesses no pocket veto.
Rameshwar Prasad v. Union of India (2006) 2 SCC 1	5 Judges (2006)	Dissolution of Bihar Legislative Assembly under Article 356 before its first meeting on subjective reports of horse-trading.	Dissolution held unconstitutional and mala fide. Governor's report based on unsubstantiated assumptions cannot form the foundation for President's rule. Floor test is mandatory.	*"The drastic power under Article 356 cannot be invoked to prevent a political party from staking a claim to form a government."*	Key precedent on procedural safeguards against arbitrary assembly dissolutions.

Nabam Rebia v. Deputy Speaker, Arunachal Pradesh (2016) 8 SCC 1	5 Judges (2016)	Discretionary powers of the Governor under Article 163; preponing assembly session without Council of Ministers' advice.	Governor cannot summon, prorogue, or dissolve the Assembly without the aid and advice of the Chief Minister and Council of Ministers. Article 163 discretion is strictly circumscribed.	*"The Governor is not an all-pervading super-constitutional authority... Discretion under Article 163 must be harmonised with the cabinet system of government."*	Landmark ruling limiting the political weaponization of the Governor's office against State autonomy.
Babulal Parate v. State of Bombay AIR 1960 SC 51	5 Judges (1960)	Constitutional validity of the States Reorganisation Act 1956; whether State Legislature's consent is mandatory under Article 3.	1. Views of the State Legislature under the proviso to Article 3 are consultative and not binding on Parliament. 2. Parliament can amend or alter the provisions of the Reorganisation Bill without referring it back to the State.	*"The views of the State Legislature are intended to assist Parliament in its deliberation; they do not fetter the sovereign legislative power of Parliament under Article 3."*	Foundational authority for answers on "Creation and Formation of New States".
In Re: Berubari Union (I) AIR 1960 SC 845	8 Judges (1960)	Whether the transfer of Berubari Union No. 12 to Pakistan under the Indo-Pakistan Agreement could be effected under Article 3.	Article 3 deals only with internal adjustment and reorganization of territories of States within the Union. It does not empower Parliament to cede Indian territory to a foreign State. Cession requires a Constitutional Amendment under Article 368.	*"The power to diminish the area of any State under Article 3(c) does not include the power to cede national territory to a foreign sovereign power."*	Crucial distinction between internal reorganisation (Art. 3) and cession of territory (Art. 368).
State of Karnataka v.	7 Judges (1977)	Maintainability of an Article 131 suit	Article 131 encompasses	*"Federalism does not mean*	Authority on Article 131

Union of India (1977) 4 SCC 608	challenging Central appointment of a Commission of Inquiry against a State Chief Minister.	any dispute involving legal or constitutional rights between Union and States. Centre has power to inquire into corruption allegations against State ministers under Commissions of Inquiry Act.	*complete isolation or water-tight insulation of the States from national oversight."*	original jurisdiction and Centre-State legal disputes.

PART 5: Master Examination Answer Blueprints

MASTER BLUEPRINT 1 (25 MARKS)

Questions Addressed:

- *June 2024, Q.1:* Explain fully, the principle of "Federalism" embodied in the Constitution of India and the relationship of trust and faith between Centre and States. [25 Marks]
- *2023, Q.4:* Explain fully, the principle of "Federalism" embodied in the Constitution of India and the emerging dynamics of Centre-State relations. [25 Marks]
- *2019, Q.3:* Explain fully, the principle of 'Federalism' embodied in the Constitution of India and the relationship of trust and faith between Centre and States. [25 Marks]
- *2015, Q.8 / Q.6:* Explain fully, the principle of 'Federalism' embodied in the Constitution of India and relationship of trust and faith between Centre and States. [25 Marks]

1. Model Introduction & Jurisprudential Grounding

Federalism is not merely an administrative arrangement; it is an organic constitutional compact that secures unity in diversity. Unlike classical federal models such as the United States of America—which arose out of an agreement among pre-existing sovereign states (*foedus*)—the Indian federal model was structured as an indestructible Union born out of the imperative to integrate hundreds of princely states and diverse provinces into an egalitarian, sovereign socialist secular democratic republic.

While classical political theorists like **Prof. K.C. Wheare** characterized the Indian Constitution as *"quasi-federal"* due to its pronounced unitary features, modern constitutional jurisprudence has repudiated this simplistic categorization. The Supreme Court in ***S.R. Bommai v. Union of India* (1994)** elevated Federalism to the status of an immutable **Basic Feature** of the Constitution.* ***Subsequent Constitution Benches in*** Govt. of NCT of Delhi v. Union of India *(2018 & 2023) and 9-Judge Benches in* **Jindal Stainless Ltd. v. State of Haryana* (2017)** have reconceptualized Indian federalism as a dynamic matrix of **Collaborative Federalism**, **Constitutional Morality**, and **Fiscal**

Autonomy, founded inherently on mutual "trust and faith" between the Union and the constituent States.

2. Structural Pillars of Indian Federalism

Indian federalism rests on four interconnected institutional pillars:

13. **Division of Sovereign Legislative Competence:** Articles 245–254 and the Seventh Schedule partition the sovereign field into Union, State, and Concurrent spheres, preserving regional autonomy over matters of local governance while securing national uniformity in strategic areas.
14. **Administrative Integration with Decentralized Execution:** Articles 256–263 construct an administrative highway where States execute Union mandates while retaining autonomy over local administrative institutions and police forces.
15. **Fiscal Interdependence & Resource Sharing:** Articles 268–293, the Finance Commission (Art. 280), and the GST Council (Art. 279A) govern fiscal transfers and collaborative indirect tax architecture.
16. **Independent Constitutional Arbiter:** The Supreme Court, exercising exclusive original jurisdiction under Article 131, functions as the impartial umpire adjudicating jurisdictional boundaries between Union and State entities.

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                    THE SPECTRUM OF INDIAN FEDERAL DYNAMICS

  COERCIVE / UNITARY BIAS ◄──────────────────────────────────► COOPERATIVE & FISCAL AUTONOMY
  • Emergency Powers (Art. 356)                                • Collaborative Dialogue (NCT
Delhi)
  • Centre Appointed Governors                                 • GST Council Consensus (Art.
279A)
  • Residuary Powers with Centre (H.S. Dhillon)                • State Taxing Autonomy
(Jindal Stainless)
  • Destructible Units (Art. 3)                                • Inter-State Council (Art.
263)
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3. The Constitutional Principle of "Trust and Faith"

The relationship of "trust and faith" between the Union and States is not a rhetorical platitude; it is a legally enforceable constitutional principle rooted in **Constitutional Morality**:

- **Article 256 & 257 vs. State Autonomy:** The Union's power to give executive directions to States under Articles 256 and 257 must be exercised with extreme self-restraint and only for advancing national integration. Arbitrary use of Article 365 to dismiss State governments degrades trust.
- **The Governor as a Bridge, Not an Obstructionist (No "Pocket Veto"):** As authoritatively held in ***State of Punjab v. Principal Secretary to Governor* (2023 INSC 1008)**, the Governor represents the constitutional head of the State, not a political agent of the Centre. **The Governor possesses no "pocket veto" under Article 200.** The constitutional phrase "shall declare" mandates positive action; the Governor cannot stall an elected legislature by sitting indefinitely on bills. If withholding assent, the Governor must mandatorily return the Bill to the House "as soon as possible". If re-passed, assent cannot be denied.
- **Fiscal Faith & Timely Devolution:** Cooperative federalism requires prompt release of statutory tax shares recommended by the Finance Commission and GST compensation dues. Unilateral cess imposition (which bypasses the divisible pool under Article 270) erodes the financial faith of the States.

4. Emerging Strains and Contemporary Dynamics

17. **Asymmetric Federalism:** The Indian Constitution explicitly embraces asymmetric arrangements (Articles 371 to 371J, Sixth Schedule autonomous district councils) to protect tribal, cultural, and historical specificities. The dilution and restructuring of such arrangements without broad regional consensus challenge the federal fabric.
18. **Central Investigative Agencies and Federal Boundaries:** Friction surrounding the jurisdiction of central agencies (CBI general consent withdrawal, Enforcement Directorate actions against state functionaries) tests the constitutional balance between national anti-corruption mandates and state police powers (Entry 2 List II).
19. **Fiscal Autonomy and State Taxing Powers:** In ***Jindal Stainless Ltd. v. State of Haryana* (2017) 12 SCC 1**, a 9-Judge Constitution Bench ruled that States possess non-subordinate, plenary taxing powers under List II. Maintaining the financial viability of States is indispensable to preserving Indian federalism from degenerating into over-centralized dependency.

5. Comprehensive Analytical Conclusion

Indian federalism has demonstrated remarkable resilience, transitioning from the Nehruvian centralized planned economy, through the era of coalition bargaining, to contemporary competitive and collaborative federalism. True federal health requires the Union to treat States not as administrative subordinate satellites, but as co-equal constitutional partners. The survival of Indian democracy hinges upon preserving the delicate balance between national unity and state autonomy, anchored by the sacred constitutional covenant of mutual trust, faith, and institutional deference.

MASTER BLUEPRINT 2 (25 MARKS)

Question Addressed:

- *2019, Q.5:* Discuss in detail about "President's rule" under Article 356 and his legislative powers. [25 Marks]

1. Historical Genesis and Constitutional Architecture of Article 356

Article 356 represents the most potent emergency weapon in the Indian constitutional arsenal. Borrowed conceptually from Section 93 of the Government of India Act, 1935, its inclusion was hotly contested in the Constituent Assembly. Leaders like **H.N. Kunzru** and **Naziruddin Ahmad** warned that it could easily be weaponized to suppress provincial democracy.

In response, **Dr. B.R. Ambedkar** offered his famous solemn assurance:

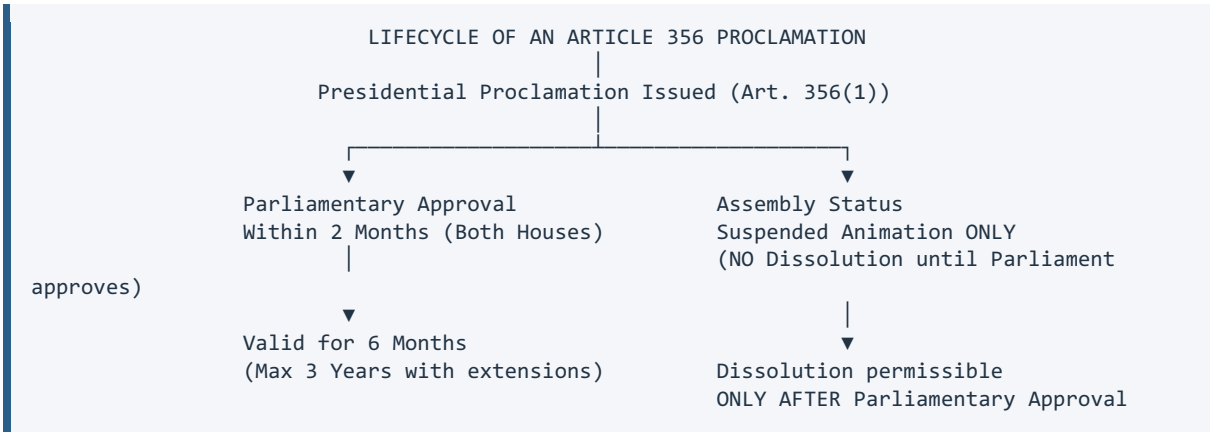
> *"I hope that such articles will never be called into operation and that they would remain a dead letter. I save myself from giving any explanation to that effect by expressing the hope that the first thing the President will do is to issue a mere warning to a Province."*

Tragically, historical reality defied this noble aspiration; Article 356 was invoked over 100 times between 1950 and 1994, frequently for partisan political decapitation of opposition-ruled State governments.

2. Anatomy and Operational Mechanisms of Article 356

- **Invocation Triggers:**

  - *Ground:* Satisfaction of the President that a situation has arisen wherein the government of the State cannot be carried on in accordance with the provisions of the Constitution.
  - *Source of Material:* Either *"on receipt of a report from the Governor of a State"* or *"otherwise"* (the Union's independent assessment under its Article 355 duty to protect States against external aggression and internal disturbance).
- **Parliamentary Safeguards & Timelines:**
  - Proclamation must be laid before both Houses of Parliament within **two months**.
  - If approved by simple majority of both Houses, it continues for **six months**.
  - Maximum standard period is **three years** (each extension requiring parliamentary approval every 6 months).
  - *44th Constitutional Amendment Safeguard (Art. 356(5)):* Beyond one year, extension is impermissible unless a National Emergency (Art. 352) is in operation AND the Election Commission certifies that general elections to the Legislative Assembly cannot be held.



3. Legislative and Executive Powers during President's Rule

When a proclamation under Article 356 is issued:

20. **Executive Powers (Article 356(1)(a)):** The President assumes all or any of the functions of the State Government and all or any of the powers vested in or exercisable by the Governor. The State Ministry is dismissed, and the Governor exercises executive authority on behalf of the President, assisted by Union-appointed advisors.
21. **Legislative Powers (Article 356(1)(b) & Article 357):**
    - The powers of the State Legislature are declared to be exercisable by or under the authority of **Parliament**.
    - *Conferment of Legislative Power (Article 357(1)(a)):* Parliament can delegate the law-making power of the State to the President, authorizing him to enact "President's Acts" for the State.
    - *Appropriation of Funds (Article 357(1)(c)):* When the Lok Sabha is not in session, the President can authorize expenditure from the Consolidated Fund of the State pending sanction by Parliament.
    - *Continuance of Laws (Article 357(2)):* Any law made by Parliament or the President remains in operation even after the proclamation ceases until altered, repealed, or amended by the re-established State Legislature.

22. **Judicial Boundary:** The proviso to Article 356(1) explicitly bars the President from assuming or suspending any of the powers vested in or exercisable by a **High Court**.

4. The Jurisprudential Revolution: The *Bommai* Doctrine

In ***S.R. Bommai v. Union of India* (1994) 3 SCC 1**, a 9-Judge Constitution Bench established revolutionary constitutional safeguards:

23. **Judicial Review of Proclamation:** Presidential proclamation under Article 356 is not immune from judicial review. While the subjective satisfaction of the President cannot be substituted, the Court will examine the **objective materials** underlying the decision to determine if they are relevant, rational, and free from mala fides.
24. **Suspended Animation vs. Dissolution:** The Legislative Assembly **cannot be dissolved** immediately upon issuing the proclamation. It must be kept in **suspended animation** until both Houses of Parliament approve the proclamation within the mandatory two-month window.
25. **Mandatory Floor Test:** The strength of an incumbent ministry can be tested **only on the floor of the Legislative Assembly**, never in the private assessment of the Governor or the Raj Bhavan drawing-room.
26. **Power of Restitution / Revival:** If the Supreme Court declares the proclamation unconstitutional, it has plenary power under Article 142 to **restore and revive the dissolved government and the dissolved legislative assembly**, invalidating all intermediate executive excess.

5. Post-*Bommai* Reinforcements

- ***Rameshwar Prasad v. Union of India* (2006) 2 SCC 1:** The dissolution of the Bihar Assembly by the Governor based on apprehension of horse-trading was quashed as mala fide and unconstitutional.
- ***Nabam Rebia v. Deputy Speaker, Arunachal Pradesh* (2016) 8 SCC 1:** The Supreme Court ordered status quo ante, restoring the dismissed government in Arunachal Pradesh and reaffirming that discretionary powers under Article 163 cannot circumvent democratic governance.
- ***Shivraj Singh Chouhan v. Speaker, MP Legislative Assembly* (2020) 3 SCC 629:** Reaffirmed that whenever a government's majority is challenged, an immediate floor test is the sole constitutional antidote to political manipulation.

MASTER BLUEPRINT 3 (10 / 12.5 MARKS)

Question Addressed:

- *2022, Part B – Q.1:* Success of India as a federal country depends not just on the harmonious relationship between Centre and the States but also between States. Explain in detail with recent developments. [10 Marks]

1. Introduction: Horizontal Federalism

While constitutional discourse traditionally focuses on "Vertical Federalism" (the hierarchical balance between Union and States), the survival and operational vitality of the Indian Republic depend equally on **"Horizontal Federalism"**—the web of cooperative, peaceful, and legally harmonized relationships *among the States themselves*. In a continent-sized nation with diverse

linguistic, geographic, and economic units, inter-state friction threatens national unity and social stability.

2. Constitutional Machinery for Inter-State Harmony

27. **Adjudication of Inter-State Water Disputes (Article 262):**
    - Water is a finite, life-sustaining resource shared across administrative boundaries. Recognizing that ordinary court litigation could exacerbate inter-state hostility, the Framers authorized Parliament to create specialized tribunals (Inter-State River Water Disputes Act, 1956) and excluded judicial interference.
    - *Key Disputes:* Cauvery (Tamil Nadu, Karnataka, Kerala, Puducherry), Krishna (Maharashtra, Karnataka, Andhra Pradesh, Telangana), and Sutlej-Yamuna Link / SYL Canal (Punjab and Haryana).
28. **Inter-State Council (Article 263):**
    - A constitutional institution designed to investigate, discuss, and formulate coordinated policies on subjects of common interest among States.
29. **Full Faith and Credit Clause (Article 261):**
    - Mandates that full faith and credit shall be given throughout India to public acts, records, and judicial proceedings of the Union and of every State, preventing inter-state legal anarchy.
30. **Freedom of Inter-State Trade and Commerce (Article 301):**
    - Guarantees that trade, commerce, and intercourse throughout the territory of India shall be free, preventing provincial economic protectionism.

3. Contemporary Frictions and Recent Developments

- **Inter-State Boundary Disputes:** Recurring border skirmishes and police standoffs along North-Eastern borders (e.g., Assam-Mizoram border clashes in 2021) and the long-standing Belagavi dispute between Maharashtra and Karnataka demonstrate that internal borders require institutional mediation rather than political confrontation.
- **Inter-State River Water Litigation:** In ***State of Tamil Nadu v. State of Kerala* (2014) 12 SCC 696 (Mullaperiyar Dam Case)**, the Supreme Court struck down Kerala's legislation attempting to override judicial orders regarding the water level of the dam, affirming that one State cannot unilaterally subvert the rights of another.
- **Resource Nationalization vs. Regional Claims:** Disputes surrounding mining royalities, water cess on hydroelectric generation, and inter-state migration protocols (highlighted during the COVID-19 pandemic) reflect the urgency of strengthening inter-state coordination bodies.

4. Conclusion

Horizontal federalism represents the lateral glue binding the Indian Union. As recommended by the **Punchhi Commission (2010)**, the Inter-State Council must be revitalized as a permanent, active forum of collective deliberation. India cannot prosper if States view one another as rival fiefdoms rather than fraternal partners in a shared constitutional destiny.

MASTER BLUEPRINT 4 (12.5 MARKS)

Questions Addressed:

- *2018 (Set A), Q.6(a):* Creation of new States. [12.5 Marks]
- *2018 (Set B), Q.6(b):* Formation of new States. [12.5 Marks]
- *2016, Q.7(d):* Formation of new States. [12.5 Marks]

1. Constitutional Foundations: Articles 2, 3, and 4

The power to alter the political geography of India is vested exclusively in the Union Parliament under Articles 2 and 3 of the Constitution:

- **Article 2:** Deals with the admission or establishment of new States that were previously not part of the territory of India (e.g., Sikkim).
- **Article 3:** Empowers Parliament to reshape the internal borders of India by:
  31. Forming a new State by separating territory from any State or uniting two or more States;
  32. Increasing the area of any State;
  33. Diminishing the area of any State;
  34. Altering the boundaries of any State;
  35. Altering the name of any State.

2. Mandatory Procedural Safeguards (Provisos to Article 3)

A Bill for the creation or alteration of States must satisfy two mandatory constitutional conditions:

36. **Prior Recommendation of the President:** The Bill can only be introduced in either House of Parliament on the recommendation of the President.
37. **Reference to the Concerned State Legislature:** If the proposal affects the area, boundary, or name of an existing State, the President must refer the Bill to the concerned State Legislature to express its views within a specified timeframe.

3. Landmark Judicial Interpretations

- ***Babulal Parate v. State of Bombay* (AIR 1960 SC 51):** The Supreme Court held that the views expressed by the State Legislature are **purely consultative and advisory**. Parliament is under no constitutional obligation to accept those views. Furthermore, if Parliament introduces amendments modifying the boundaries during the passage of the Bill, no fresh reference to the State Legislature is required.
- ***In Re: Berubari Union (I)* (AIR 1960 SC 845):** An 8-Judge Bench established that the power to "diminish the area of any State" under Article 3(c) applies only to internal boundary adjustments among domestic units. It **does not authorize the cession of national territory to a foreign power**. Any treaty involving cession of Indian territory requires a formal **Constitutional Amendment under Article 368**.
- ***In Re Article 370 of the Constitution* (2023 INSC 1058):** The Constitution Bench examined the reorganization of Jammu & Kashmir into two Union Territories under Article 3. The Court upheld Parliament's competence, noting that when a State is under President's Rule (Article 356), the views of the State Legislature are expressed by Parliament itself, though the Union Government made a solemn commitment to restore full statehood to J&K.

4. Conclusion

The scheme of Article 3 demonstrates that the Indian federation is an **"indestructible Union of destructible units"**. While this grants Parliament immense flexibility to satisfy linguistic, cultural, and developmental aspirations (e.g., Andhra Pradesh in 1953; Maharashtra and Gujarat in 1960; Chhattisgarh, Uttarakhand, and Jharkhand in 2000; Telangana in 2014), constitutional morality

mandates that such powers be exercised through democratic consultation rather than unilateral executive decree.

PART 6: Critical Commentary, Contemporary Controversies & Reform Commission Recommendations

1. The Politicization of the Office of the Governor: Absence of a "Pocket Veto"

The role of the Governor has emerged as the single most contentious flashpoint in modern Centre-State relations:

- **Article 200 & The Fallacy of the "Pocket Veto":** Unlike the United States Constitution—where the President can let a bill die through a recognized "pocket veto" if Congress adjourns within 10 days—the Indian Constitution **grants NO pocket veto to the Governor**. The Supreme Court in ***State of Punjab v. Principal Secretary to Governor* (2023 INSC 1008)** held that the Governor, being an unelected constitutional figurehead, cannot stall the functioning of an elected legislature by sitting on bills. The words *"shall declare"* in Article 200 mandate positive, timely discharge of duty. If the Governor withholds assent, he must mandatorily return the Bill *"as soon as possible"* to the House for reconsideration. If the House passes it again, assent must be given. Treating executive inaction as a pocket veto is an unconstitutional subversion of representative democracy.
- **Misuse of Discretionary Powers (Article 163):** Governors have improperly determined floor test schedules, delayed summoning sessions (*Nabam Rebia*, 2016), and reserved bills unnecessarily for Presidential consideration under Article 201.

2. Fiscal Asymmetry and the Threat to State Autonomy

- **The Proliferation of Cesses and Surcharges:** Under Article 270, revenues collected through general taxes are shared between the Union and States based on Finance Commission recommendations. However, revenues from cesses and surcharges accrue **100% exclusively to the Union**. The dramatic expansion of cesses in recent Union budgets shrinks the divisible pool, starving States of untied constitutional revenue.
- **Borrowing Ceilings and Financial Autonomy under Article 293:** Article 293(3) requires a State to obtain Central consent before raising loans if it has outstanding Central debts. The increasing imposition of strict net borrowing ceilings by the Union—including counting off-budget borrowings by State Public Sector Undertakings—has ignited constitutional tensions between national macroeconomic fiscal prudence and the financial autonomy guaranteed to States under the federal structure.

3. Major Reform Commission Recommendations

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┌──────────────────────────────────────────────────────────────────────────────┐
│                          KEY REFORM COMMISSIONS ON FEDERALISM                │
├──────────────────────────────┬──────────────────────────────┬────────────────┤
│ Commission                   │ Key Recommendations          │ Status / Impact│
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Sarkaria Commission (1983–1988)	• Art. 356 as rare remedy • Floor test before dismissal • Consult CM on Governor appt	Partially implemented via S.R. Bommai (1994)
National Commission to Review the Working of the Constitution (NCRWC, 2002)	• Clear timeline for Gov. assent under Art. 200 • Inter-State Council to meet at least twice a year	Awaiting formal constitutional amendment
Punchhi Commission (2007–2010)	• Localized emergency option instead of full Art. 356 • Governor removal by State Assembly impeachment • Equal Rajya Sabha seats	Cited extensively by Supreme Court in recent federal adjudications

38. **Sarkaria Commission (1983–1988):**
    - Article 356 must be invoked only in the rarest of rare cases after exploring all alternative remedies and issuing a formal warning.
    - The Governor should be an eminent person outside active politics and appointed in consultation with the Chief Minister of the State.
    - The Inter-State Council must be institutionalized (which led to its formal creation under Article 263 in 1990).
39. **Punchhi Commission (2007–2010):**
    - Proposed **"Localized Emergency"** provisions to handle communal disturbances or localized law-and-order failures without dismissing an entire elected State government.
    - Recommended that Governors should have a fixed 5-year tenure and their removal should be through a process of impeachment by the State Legislature, preventing arbitrary central dismissals.
    - Recommended that the Inter-State Council be given an independent secretariat and empowered to settle disputes before they escalate to the judiciary.
40. **Synthesis:** Indian federalism can survive and thrive only through a genuine institutional commitment to **Cooperative and Collaborative Federalism**, where the Union leads through consensus and mutual respect rather than legislative pre-emption or financial coercion.

Paper 2: Indian Constitutional Law – The New Challenges

Master Study Material: Theme 2

THEME 2: "State" under Article 12, Privatization & Economic Liberalization

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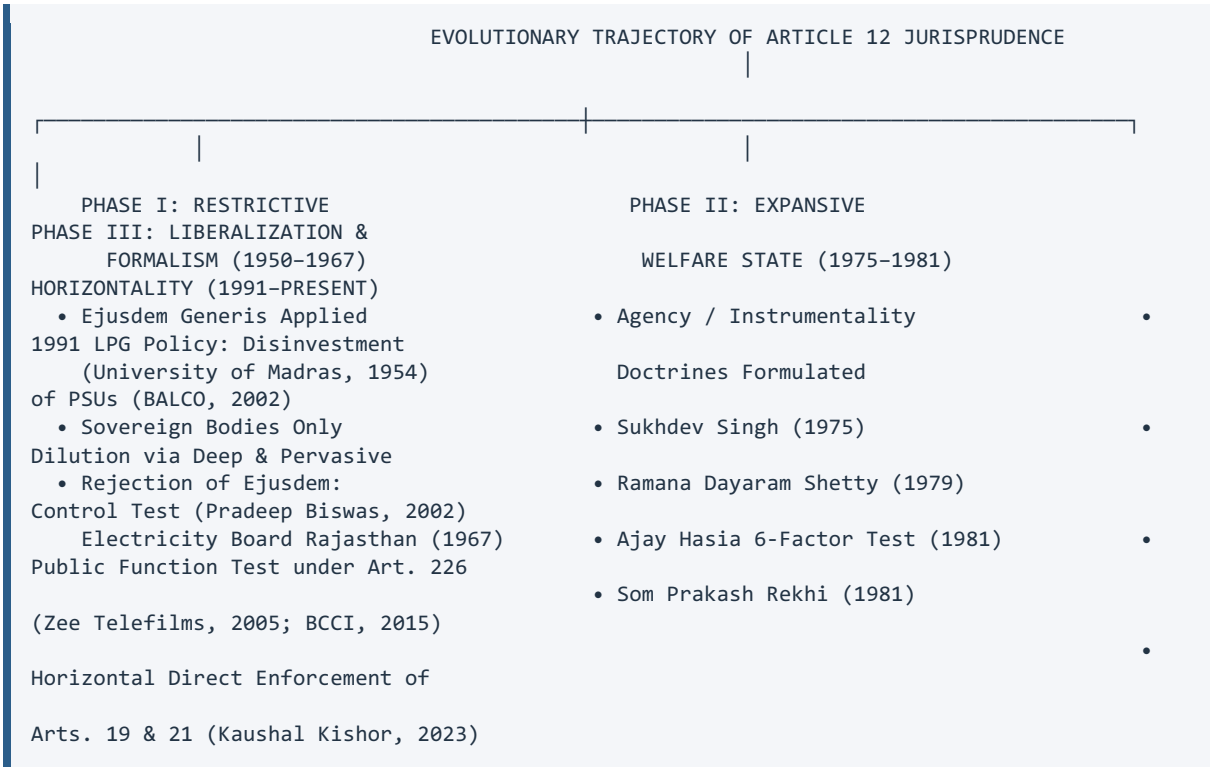
PART 1: Exhaustive Syllabus & Thematic Scope

Article 12 occupies the supreme gateway position in Part III of the Constitution of India. It establishes the jurisdictional perimeter within which Fundamental Rights are enforceable. The concept of the "State" has undergone an extraordinary jurisprudential transformation over the past seven decades—evolving from an initial formalistic, sovereign-centric paradigm to a dynamic "agency or instrumentality" test, and confronting in the 21st century the seismic challenges unleashed by Liberalization, Privatization, and Globalization (LPG).



Detailed Syllabus Breakdown:

41. **The Architecture and Anatomy of Article 12:**
    - Textual composition: Executive and Legislative organs of Union and States; Local Authorities; and the enigmatic category of *"Other Authorities within the territory of India or under the control of the Government of India"*.

- Historical context and Constituent Assembly Debates: Dr. B.R. Ambedkar's explanation of Article 12 as an expansive net to ensure that every authority exercising coercive or administrative power over citizens is bound by Fundamental Rights.

42. **The Judicial Interpretation of "Other Authorities":**
    - The Restrictive Era: Application of the *ejusdem generis* rule (*University of Madras v. Shantha Bai*, 1954) and its definitive rejection in *Ujjam Bai v. State of U.P.* (1962) and *Electricity Board, Rajasthan v. Mohan Lal* (1967) (any authority created by statute and endowed with statutory powers).
    - The Functional and Structural Leap: The transition from statutory bodies to non-statutory corporations, registered societies, and government companies.
    - The Agency or Instrumentality Doctrine:
        - *Sukhdev Singh v. Bhagatram* (1975): Justice Mathew's visionary concurrence on corporate statehood and public functions.
        - *Ramana Dayaram Shetty v. International Airport Authority of India (IAAI)* (1979): Justice P.N. Bhagwati's formulation of structural, financial, and governmental indices.
        - *Ajay Hasia v. Khalid Mujib Sehravardi* (1981): Codification of the classical **Six-Factor Test**.
        - *Som Prakash Rekhi v. Union of India* (1981): Bharat Petroleum Corporation held to be State; form is irrelevant, substance is decisive.
43. **The Recalibration & Doctrinal Tightening:**
    - *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology* (2002): 7-Judge Constitution Bench overruling *Sabhajit Tewary* (1975). Formulation of the modern standard: **"Deep and pervasive control"** (financially, functionally, and administratively dominated by the Government).
    - *Zee Telefilms Ltd. v. Union of India* (2005): Board of Control for Cricket in India (BCCI) held not to be "State" under Article 12, despite holding a de facto monopoly, triggering intense academic criticism regarding the inadequacy of Article 12 in the neo-liberal era.
44. **Economic Liberalization, Privatization, and the Retreat of the Welfare State:**
    - The 1991 New Economic Policy: Disinvestment, public-private partnerships (PPP), outsourcing of sovereign and municipal functions, and deregulation.
    - Privatization of vital public utilities: Power distribution, municipal water, civil aviation, telecom, healthcare, and education.
    - The Corporate Veil Shield: How private corporations performing quintessential public duties evade the writ jurisdiction of Article 32.
    - The *BALCO Employees Union v. Union of India* (2002) precedent: Disinvestment upheld as a non-justiciable economic policy choice, leaving employees and affirmative action vulnerable.
45. **The Crisis of Affirmative Action and Social Justice:**
    - The constitutional mandate of reservations: Articles 15(4), 16(4), 16(4A), and 16(4B) operate exclusively against the "State".
    - The Disinvestment Deficit: As public sector enterprises (the traditional bastion of SC/ST/OBC employment) are transferred to private hands, the constitutional promise of substantive equality is hollowed out.

- Demands for affirmative action in the private sector: Constitutional, legislative, and corporate governance debates (Sachar Committee, Thorat Committee, National Commission for Scheduled Castes).

46. **Remedial Pathways and Emerging Frontiers:**
    - Expanding the Reach of Judicial Review via Article 226: The "Public Function" and "Public Duty" doctrine (*Andi Mukta Sadguru*, *Janet Jeyapaul*, *BCCI v. Cricket Association of Bihar*).
    - The Boundary between Public Law and Private Contract: *St. Mary's Education Society v. Rajendra Prasad Bhargava* (2023).
    - The Horizontal Application Revolution: *Kaushal Kishor v. State of U.P.* (2023) (5-Judge Constitution Bench establishing that Fundamental Rights under Articles 19 and 21 are directly enforceable against private entities and non-state actors).

PART 2: Complete PYQ Question Bank (2015 – 2026)

> ⚠️ ***Note on Speculative Model Question:*** *The 2025–26 (Feb 2026) entry included below represents a forward-looking* ***speculative / model examination question*** *formulated on anticipated syllabus updates, rather than an archived historical sitting.*

All twelve examination questions mapped to Theme 2 are reproduced below verbatim with their exact year, question number, and mark distribution:

Year & Session	Question Identifier	Verbatim Examination Question Text	Prescribed Marks
Feb 2026 (2025–26) [Speculative / Model Projection]	Q.1	Critically examine the scope and definition of 'State' under Article 12 of the Indian Constitution. Has the judicial interpretation expanded or diluted its ambit? Explain. / भारतीय राज्यघटनेच्या कलम १२ अंतर्गत 'राज्य' ची व्याप्ती आणि व्याख्या यांचे गंभीरपणे परीक्षण करा. न्यायालयीन स्पष्टीकरणाने त्याची व्याप्ती वाढवली आहे की सौम्य केली आहे? स्पष्ट करा.	**25 Marks**
May 2025 (2024–25)	Q.1	Discuss the interpretation of "State" under Article 12 of the	**25 Marks**

		Indian Constitution. How has the judiciary expanded the concept of 'other authorities' in the era of globalization and privatization?	
June 2024	Q.2	Discuss with decided cases the need to widen the nature and scope of Article 12 of the Constitution in the backdrop of Liberalization and Privatization.	**25 Marks**
2023	Q.1	Explain the need for redefining the "State" in view of the policy of economic liberalization.	**25 Marks**
2023	Q.6	In the backdrop of Liberalization justify the need to widen the nature and scope of Article 12 of the Constitution.	**25 Marks**
2022	Part A – Q.1	State the definition of 'State' under Article 12.	**3 Marks**
2019	Q.4	Comment critically on the "policy of privatization" which affects the principle of affirmative action, mentioned in the Constitution of India for bringing equality in the society?	**25 Marks**
2018 (Set A)	Q.3	Privatization affects programme of affirmative action. Discuss.	**25 Marks**
2018 (Set B)	Q.3	Privatization affects programme of affirmative action. Discuss.	**25 Marks**
2016	Q.1	Explain tests to determine whether a body is an agency or instrumentality of the Government under Art.	**25 Marks**

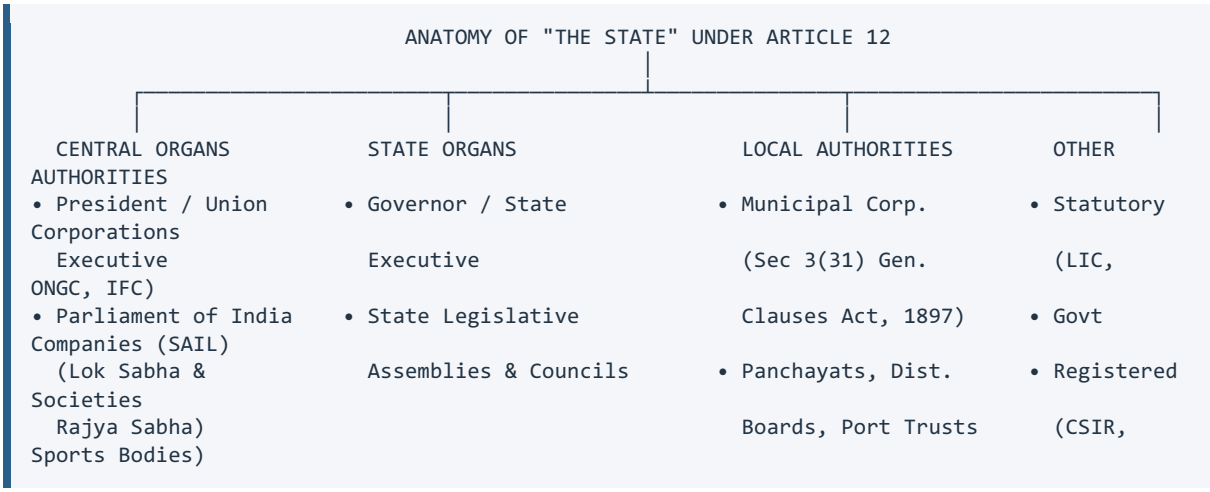
		12 of the Constitution. Discuss with the help of judicial pronouncements.	
2015 (Set A)	Q.1	Explain tests to determine whether a body is an agency or instrumentality of the Government under Article 12 of the Constitution of India.	**25 Marks**
2015 (Set B)	Q.2	In the backdrop of Liberalisation justify the need to widen the nature and scope of Article 12 of the Constitution.	**25 Marks**

PART 3: Foundational Legal Framework & Constitutional Anatomy

1. Textual Breakdown of Article 12

Article 12 provides:

> *"In this part, unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."*



The definition is explicitly **inclusive, not exhaustive**. It contains four discrete limbs:

47. **The Government and Parliament of India:** The Union Executive (President, Prime Minister, Council of Ministers, and Central Ministries/Departments) and the Union Legislature.
48. **The Government and the Legislature of each of the States:** The State Executive (Governor, Chief Minister, State Departments) and the State Legislative Assemblies/Councils.

49. **Local Authorities:** Defined under Section 3(31) of the General Clauses Act, 1897 as municipal corporations, municipalities, district boards, mining boards, and village panchayats possessing independent legal existence, territorial boundaries, and statutory taxing powers (*Union of India v. R.C. Jain*, 1981).
50. **Other Authorities within the territory of India or under the control of the Government of India:** The expansive residual category that forms the battleground of constitutional litigation.

2. The Judiciary: Is it "State" under Article 12?

- **The Dichotomy:** While exercising administrative functions (e.g., appointments, staff disciplinary proceedings, rule-making under Article 145/229), the judiciary is unequivocally "State" (*Prem Chand Garg v. Excise Commissioner*, 1963).
- **Adjudicatory Functions:** When acting in its judicial capacity, a court of law is generally **not** considered "State" under Article 12, because a judicial order cannot be challenged via an Article 32 writ petition on the ground that it violates Fundamental Rights (*Naresh Shridhar Mirajkar v. State of Maharashtra*, 1967; *A.R. Antulay v. R.S. Nayak*, 1988). The proper remedy against erroneous judicial orders is appellate review under Article 136 or review under Article 137.

3. Constitutional Architecture of Affirmative Action (Articles 15 & 16)

- **Article 15(4):** Added by the 1st Constitutional Amendment (1951) following *State of Madras v. Champakam Dorairajan*; empowers the State to make special provisions for the advancement of socially and educationally backward classes (SEBCs), SCs, and STs.
- **Article 15(5):** Added by the 93rd Constitutional Amendment (2005); extends reservation to educational institutions, including private aided and unaided institutions (upheld in *Pramati Educational Trust*, 2014), but excludes minority educational institutions under Article 30.
- **Article 16(4):** Authorizes the State to provide reservations in appointments or posts in public services in favor of any backward class of citizens not adequately represented.
- **Article 16(4A) & 16(4B):** Protects reservations in promotions with consequential seniority and carries forward unfilled vacancies.
- **The Private Sector Void:** The constitutional text of Article 16 strictly governs **employment "under the State"**. Private corporations, commercial firms, and privatized entities possess no constitutional obligation under Article 16 to implement reservations.

4. The Jurisdictional Contrast: Article 32 vs. Article 226

The distinction between the Supreme Court's writ jurisdiction under Article 32 and the High Court's jurisdiction under Article 226 is central to the modern regulation of privatized bodies:

- **Article 32:** A Fundamental Right in itself, but strictly enforceable **only against the "State"** as defined under Article 12 for the violation of Part III rights.
- **Article 226:** Far broader in text and scope; empowers High Courts to issue writs to *"any person or authority, including in appropriate cases, any Government"* not only for the enforcement of Fundamental Rights, but **"for any other purpose"** (enforcement of non-fundamental legal and statutory rights, and performance of public duties).

PART 4: Landmark & Contemporary Case Law Matrix

Case Name & Citation	Bench Strength & Year	Core Constitutional Issue	Ratio Decidendi & Legal Principles	Verbatim / Key Observation	Application in Exams
Electricity Board, Rajasthan v. Mohan Lal AIR 1967 SC 1857	5 Judges (1967)	Whether a State Electricity Board created by statute is "other authority" under Article 12.	Rejected the doctrine of *ejusdem generis*. "Other authorities" includes all authorities created by the Constitution or statute on whom powers are conferred by law, even if engaged in commercial trade.	*"The expression 'other authorities' in Article 12 will include all constitutional or statutory authorities on whom powers are conferred by law."*	Classic starting point; rejected the doctrine of sovereign/governmental functions as an exclusive test.
Sukhdev Singh v. Bhagatram (1975) 1 SCC 421	5 Judges (1975)	Whether statutory corporations (LIC, ONGC, IFC) are "State" under Article 12.	Statutory corporations with statutory powers to make binding regulations are authorities under Article 12. Justice K.K. Mathew's concurring opinion laid the foundation for the "Agency or Instrumentality" test.	*"A state is an abstract entity... It can act only through the agency of natural or juridical persons. A public corporation is a new form of government organ."* (Mathew J.)	Pioneer judgment shifting the focus from sovereign power to public purpose and state agency.
Ramana Dayaram Shetty v. IAAI (1979) 3 SCC 489	3 Judges (1979)	Whether International Airport Authority of India (IAAI) is State; arbitrariness in government tender allocation.	Formulated the **Structural & Financial Agency Test**: If a corporation is an agency or instrumentality of the government, it is subject to the same constitutional limitations	*"If a corporation is an instrumentality or agency of Government, it must be subject to the same limitations in the field of constitutional law as Government itself."* (Bhagwati J.)	The foundational locus classicus on the Agency/Instrumentality doctrine.

			under Article 14 as the government itself.		
Ajay Hasia v. Khalid Mujib (1981) 1 SCC 722	5 Judges (1981)	Whether an engineering college registered as an autonomous Society under Societies Registration Act is "State".	Codified the classical **Six-Factor Test** to determine an agency or instrumentality: (1) Share capital; (2) Financial assistance; (3) Monopoly status; (4) Deep and pervasive state control; (5) Public importance of functions; (6) Transfer of government department.	*"The corporate veil can be pierced. If the functions are governmental or public, and state control is deep and pervasive, the body is an instrumentality of the State."*	The definitive 6-factor formula that every candidate must cite and dissect in full.
Som Prakash Rekhi v. Union of India (1981) 1 SCC 449	3 Judges (1981)	Whether Bharat Petroleum Corporation Ltd. (a Government Company under Companies Act) is "State".	Formal legal status (whether statutory body, company, or society) is irrelevant. The true test is functional, structural, and financial reality. BPCL held to be State.	*"The true test is not whether the corporate entity is formal or informal, but whether it is a cloaked limb of the government."* (Krishna Iyer J.)	Established that Government Companies under the Companies Act fall under Article 12.
Pradeep Kumar Biswas v. Indian Inst. of Chemical Biology (2002) 5 SCC 111	7 Judges (2002)	Overruling of *Sabhajit Tewary* (1975); whether CSIR (Council of Scientific and Industrial Research) is "State".	Recalibrated *Ajay Hasia*. Not every form of government assistance makes a body "State". The control must be **"Deep and Pervasive"**—financially, functionally, and administratively dominated by the Government.	*"To be an instrumentality of State, the body must be functionally, financially and administratively under the deep and pervasive control of the Government."*	The reigning 7-judge Constitution Bench precedent; tightened the threshold of Article 12.

			CSIR held to be State.		
BALCO Employees Union v. Union of India (2002) 2 SCC 333	3 Judges (2002)	Disinvestment of 51% equity in Bharat Aluminium Co. Ltd. to a private strategic partner; challenge by workers.	Disinvestment is a matter of economic policy; courts will not interfere unless shown to be illegal or arbitrary. Once government shareholding falls below 51%, the entity ceases to be "State" under Article 12.	*"Economic policies are matters for the executive and legislature... Disinvestment per se does not violate worker rights."*	Baseline authority showing that privatization strips the company of its Article 12 status.
Zee Telefilms Ltd. v. Union of India (2005) 4 SCC 649	5 Judges (2005)	Whether the Board of Control for Cricket in India (BCCI) is "State" under Article 12.	BCCI is not State under Article 12 because government has no share capital, provides no financial aid, and does not exercise deep and pervasive administrative control. However, since it exercises a **monopoly public function**, it is amenable to **Article 226** writ jurisdiction.	*"BCCI is not an instrumentality of State under Article 12... But as it discharges public functions, an aggrieved party can seek remedy under Article 226."*	Established the critical fork: Not "State" for Article 32, but amenable to Article 226 for public functions.
BCCI v. Cricket Association of Bihar (2015) 3 SCC 251	2 Judges (2015)	Conflict of interest in BCCI administration and IPL spot-fixing; accountability of private bodies performing public functions.	Reaffirmed that BCCI discharges public functions akin to state functions (selecting national team, managing cricket monopoly). Public law principles of fairness, natural justice, and probity apply strictly to it.	*"Any organisation discharging functions that affect public interest must conform to basic standards of fairness and transparency."*	Landmark ruling enforcing public law standards onto private autonomous sporting bodies.

Janet Jeyapaul v. SRM University (2015) 16 SCC 530	2 Judges (2015)	Maintainability of writ under Article 226 against a deemed private university for wrongful termination of a lecturer.	Imparting higher education is a public function. A deemed university performs a public duty; hence, a writ under Article 226 is maintainable against it even though it is not State under Article 12.	*"Imparting education is inherently a public function. An entity discharging such public function cannot claim absolute private immunity from writ jurisdiction."*	Key modern precedent bridging education, public function, and Article 226.
Kaushal Kishor v. State of U.P. (2023) 4 SCC 1	5 Judges (2023)	Whether Fundamental Rights under Articles 19 and 21 can be claimed against non-state / private actors (Horizontal Application).	In a 4:1 majority, the Constitution Bench held that Fundamental Rights under **Articles 19 and 21 can be enforced horizontally against persons other than the State** or its instrumentalities. State also has a positive obligation to protect rights.	*"A fundamental right under Article 19 or 21 can be enforced even against persons other than the State or its instrumentalities."* (Ramasubramaniam J.)	Revolutionary milestone expanding the constitutional protection horizontally into the private realm.
St. Mary's Education Society v. Rajendra Prasad Bhargava (2023) 4 SCC 498	2 Judges (2023)	Scope of Article 226 against unaided private educational institutions in service disputes.	Clarified that an Article 226 writ lies against a private body only if the dispute involves a **public law element**. Purely contractual disputes between private school management and employees cannot be challenged via writ.	*"An application under Article 226 would not lie against a private school if the nature of the duty discharged is purely private and lacks a public law element."*	Essential boundary-setting precedent distinguishing public duty from private contract.

PART 5: Master Examination Answer Blueprints

MASTER BLUEPRINT 1 (25 MARKS)

Questions Addressed:

- *Feb 2026 (2025–26) [Speculative / Model Projection], Q.1:* Critically examine the scope and definition of 'State' under Article 12 of the Indian Constitution. Has the judicial interpretation expanded or diluted its ambit? Explain. [25 Marks]
- *May 2025 (2024–25), Q.1:* Discuss the interpretation of "State" under Article 12 of the Indian Constitution. How has the judiciary expanded the concept of 'other authorities' in the era of globalization and privatization? [25 Marks]
- *2016, Q.1 & 2015 (Set A), Q.1:* Explain tests to determine whether a body is an agency or instrumentality of the Government under Art. 12 of the Constitution. Discuss with the help of judicial pronouncements. [25 Marks]

1. Introduction & Jurisprudential Context

Part III of the Constitution of India guarantees Fundamental Rights primarily against the coercive, regulatory, and administrative might of the "State". To prevent the executive or legislature from encroaching upon individual liberties, **Article 12** provides an inclusive gateway definition specifying the entities against whom Part III rights can be enforced via the extraordinary remedy of Article 32.

The judicial interpretation of Article 12 represents a dramatic constitutional odyssey. Over the decades, the Supreme Court has moved between two polar tensions:

51. **The Expansive Phase (1967–1981):** Broadening the definition to include corporations, government companies, and societies to protect citizens in an expanding socialist welfare state.
52. **The Recalibration & Dilution Phase (2002–Present):** Tightening the test in ***Pradeep Kumar Biswas* (2002)** and* Zee Telefilms *(2005), even as modern privatization demands greater constitutional accountability. Recently, the Court has engineered a new horizontal frontier in* **Kaushal Kishor* (2023)** to bypass the rigidities of Article 12 altogether.

2. The Deconstruction of "Other Authorities" & The Agency Doctrine

The critical battleground in Article 12 has always centered on the interpretation of the phrase **"other authorities"**:

- **Initial Restrictive Stance:** Early courts invoked the canon of *ejusdem generis* (*University of Madras v. Shantha Bai*, 1954), restricting "other authorities" to bodies exercising sovereign governmental powers.
- **The Breakthrough in *Mohan Lal* (1967):** A 5-Judge Constitution Bench in ***Electricity Board, Rajasthan v. Mohan Lal*** decisively rejected *ejusdem generis*. The Court held that "other authorities" includes any statutory body created by law and endowed with legal powers, irrespective of whether it carries on commercial activity.
- **The Functional Shift (*Sukhdev Singh*, 1975):** Justice K.K. Mathew presciently recognized that modern democratic states do not govern merely through departments; they govern through public corporations. When a corporation is an agency of the state, it must be bound by Part III.

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                THE AJAY HASIA (1981) SIX-FACTOR TEST MATRIX
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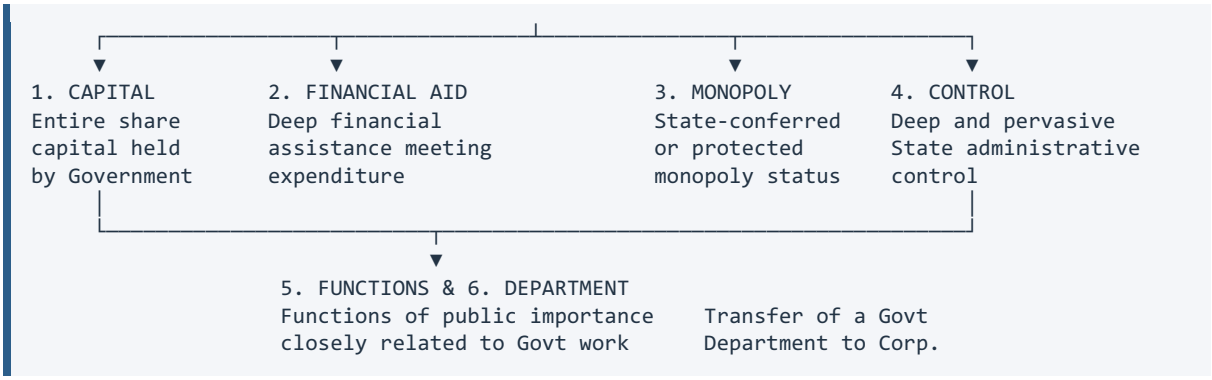


3. The Classic *Ajay Hasia* (1981) Six-Factor Test

Synthesizing the principles laid down by Justice P.N. Bhagwati in ***Ramana Dayaram Shetty* (1979)**, the Constitution Bench in*** Ajay Hasia v. Khalid Mujib *(1981) 1 SCC 722 formulated the definitive Six-Factor Test** to pierce the corporate veil:

53. **Share Capital:** If the entire share capital of the corporation is held by the Government.
54. **Financial Assistance:** Where the financial assistance of the State is so considerable as to meet almost the entire expenditure of the corporation.
55. **Monopoly Status:** Whether the corporation enjoys monopoly status which is State-conferred or State-protected.
56. **Deep and Pervasive Control:** Existence of deep and pervasive State control over the operational policies and management of the body.
57. **Public Function:** If the functions of the corporation are of public importance and closely related to governmental functions.
58. **Departmental Transfer:** If a department of Government is transferred to a corporation.

The Court cautioned that these factors are not rigid water-tight compartments, but cumulative indicators to determine whether the body is an **alter ego, agency, or instrumentality** of the Government.

4. Has the Judiciary Expanded or Diluted the Ambit of Article 12?

An objective, high-level constitutional analysis reveals a paradoxical trajectory of **expansion followed by dilution**:

Era / Phase	Constitutional Trend	Key Decided Cases	Impact on Fundamental Rights Enforcement
1967–1981	**Massive Expansion**	*Mohan Lal* (1967), *Ramana Dayaram Shetty* (1979), *Ajay Hasia* (1981), *Som Prakash Rekhi* (1981)	Form ignored; statutory bodies, government companies (BPCL), and registered societies (Regional Engineering Colleges) brought under Art. 12.
2002–2005	**Doctrinal Tightening (Dilution)**	*Pradeep Kumar Biswas* (2002 - 7 Judges), *Zee Telefilms* (2005 - 5 Judges)	Overruled *Sabhajit Tewary*; insisted that mere regulatory control or financial aid is

			insufficient—control must be **"deep, pervasive, and dominating"**. BCCI excluded from Art. 12 despite monopoly.
2015–Present	**Bifurcated Judicial Expansion**	*Janet Jeyapaul* (2015), *BCCI* (2015), *Kaushal Kishor* (2023)	Art. 12 remained narrow, but courts expanded **Article 226** via "Public Function" doctrine and recognized **Horizontal Direct Enforcement** of Arts. 19 & 21 against non-state actors.

- **The Dilution in *Pradeep Kumar Biswas* (2002):** The 7-Judge Bench narrowed the *Ajay Hasia* test. It held that to be an instrumentality of the State, the body must be *"financially, functionally, and administratively dominated by or under the pervasive control of the Government."* Mere regulatory control under a general statute does not make a body State.
- **The Dilution in *Zee Telefilms* (2005):** The 5-Judge Bench refused to declare BCCI a "State" under Article 12 because it was an autonomous society without government capital, despite acknowledging that it held a total de facto monopoly over cricket and exercised public functions that affected millions.

5. Contemporary Synthesis and Conclusion

The judicial trajectory of Article 12 reveals that while the textual definition under Article 12 has been **rigidified and diluted** in the post-liberalization era, the Supreme Court has creatively countered this limitation by expanding alternative remedial channels:

59. Transforming **Article 226** into a vehicle of public law accountability for private entities exercising public functions (*BCCI*, *Janet Jeyapaul*);
60. Establishing the **horizontal application of Articles 19 and 21** against private actors in ***Kaushal Kishor* (2023)**.

To preserve the constitutional promise of Part III in an era dominated by private mega-corporations, artificial intelligence platforms, and privatized infrastructure, Parliament must amend Article 12, or the Supreme Court must formally adopt the **"Public Function Test"** as an independent pillar of Article 12 itself.

MASTER BLUEPRINT 2 (25 MARKS)

Questions Addressed:

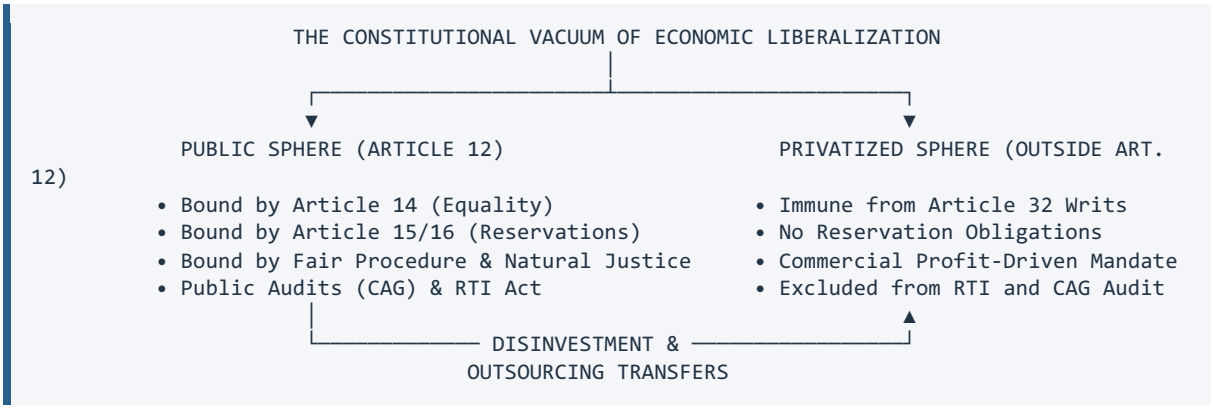
- *June 2024, Q.2:* Discuss with decided cases the need to widen the nature and scope of Article 12 of the Constitution in the backdrop of Liberalization and Privatization. [25 Marks]
- *2023, Q.1:* Explain the need for redefining the "State" in view of the policy of economic liberalization. [25 Marks]

- *2023, Q.6:* In the backdrop of Liberalization justify the need to widen the nature and scope of Article 12 of the Constitution. [25 Marks]
- *2015 (Set B), Q.2:* In the backdrop of Liberalisation justify the need to widen the nature and scope of Article 12 of the Constitution. [25 Marks]

1. Introduction: The Crisis of the Neoliberal State

The Indian Constitution was drafted on the foundational ethos of a **Sovereign Democratic Republic** committed to establishing a socialistic welfare state (Part IV - Directive Principles of State Policy). For the first four decades after Independence, the State functioned as the primary entrepreneur, employer, educator, and provider of public utilities through a vast network of Public Sector Undertakings (PSUs).

However, the adoption of the **New Economic Policy of 1991** marked a radical structural paradigm shift toward **Liberalization, Privatization, and Globalization (LPG)**. As the State progressively disinvested its equity, outsourced sovereign and municipal duties, and privatized public assets, a profound constitutional vacuum emerged: **Fundamental Rights are enforceable under Article 32 only against the "State" under Article 12, but the power that impacts citizens' daily lives is increasingly wielded by private, unaccountable corporate entities.**



2. Justification for Widening Article 12 in the Era of Privatization

The imperative to widen Article 12 rests on five compelling constitutional grounds:

61. **The Corporate Cloak of Public Monopolies:** Private corporations now operate airports, metro rail systems, electricity distribution networks, telecommunication grids, water supply, and express highways. When an entity enjoys a monopoly created or franchised by the State, it exercises coercive public power. Shielding such bodies behind the corporate veil violates the core ethos of Part III (*Ramana Dayaram Shetty*, 1979).
62. **Evasion of Non-Arbitrariness (Article 14):** In the public sector, every administrative action, tender allotment, recruitment, and termination must satisfy the test of reasonableness and non-arbitrariness under Article 14. Once privatized, these same entities can act arbitrarily, discriminate, and enforce unconscionable contractual terms without constitutional censure.
63. **Commercialization and Destruction of Fundamental Freedoms:** The privatization of higher education and healthcare has transformed basic human rights (Article 21 and 21A) into expensive commodities. Private deemed universities and corporate hospital chains exercise decisive control over citizens' lives, yet evade Article 12 scrutiny (*Janet Jeyapaul*, 2015).

64. **Digital Public Squares & Big Tech Sovereigns:** Private social media and technological corporations (Google, Meta, X) control the public sphere of expression and speech (Article 19(1)(a)). If an algorithm arbitrarily silences political discourse or cancels an account, a citizen is left remediless under Article 32 because the tech giant is not a "State".
65. **The Disinvestment Dilemma (*BALCO*, 2002):** In ***BALCO Employees Union v. Union of India* (2002) 2 SCC 333**, the Supreme Court upheld the disinvestment of BALCO to a private partner as a non-justiciable economic policy choice. The moment the Union's shareholding dropped below 51%, BALCO shed its Article 12 character, extinguishing employees' public law remedies and constitutional protections overnight.

3. Judicial Bridging Mechanisms: The "Public Function" Doctrine

Recognizing the widening gulf between constitutional rights and corporate power, the judiciary has deployed innovative legal doctrines to subject private entities to public law discipline:

- **The Public Duty Writ under Article 226 (*Andi Mukta Sadguru*, 1989):** The Supreme Court held that the words "any person or authority" under Article 226 are not confined to statutory authorities, but extend to any person or body performing a **public duty**, irrespective of its form.
- **The BCCI Adjudications (*Zee Telefilms*, 2005 & *BCCI v. Cricket Association of Bihar*, 2015):** The Court declared that while BCCI is not "State" under Article 12, its monopoly control over cricket constitutes a public function, rendering it amenable to Article 226 judicial review on grounds of fairness, transparency, and conflict of interest.
- **The Horizontal Leap (*Kaushal Kishor*, 2023):** A 5-Judge Constitution Bench ruled that Fundamental Rights under **Articles 19 and 21 are directly enforceable against private entities**, fundamentally eroding the traditional vertical-only doctrine of constitutional rights.

4. Comparative Constitutional Models

Modern global constitutionalism recognizes the necessity of binding private power:

- **South African Constitution (1996), Section 8(2):** A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.
- **United States "State Action" Doctrine:** Where a private entity performs a function that is "traditionally exclusively reserved to the State" (*Marsh v. Alabama*, *Jackson v. Metropolitan Edison Co.*), it is treated as the State.

5. Conclusion & Actionable Proposals

The definition of "State" under Article 12 can no longer remain chained to 19th-century notions of bureaucratic government departments. To safeguard constitutional democracy in the 21st century:

66. **Adopt the Functional Test:** Article 12 must be interpreted dynamically to encompass **any entity—public or private—that performs a public function, exercises monopoly power, or utilizes public resources**.
67. **Constitutional Amendment:** As recommended by legal scholars, an explanation should be inserted into Article 12 clarifying that "other authorities" includes non-governmental bodies performing public functions or delivering essential public utilities.

MASTER BLUEPRINT 3 (25 MARKS)

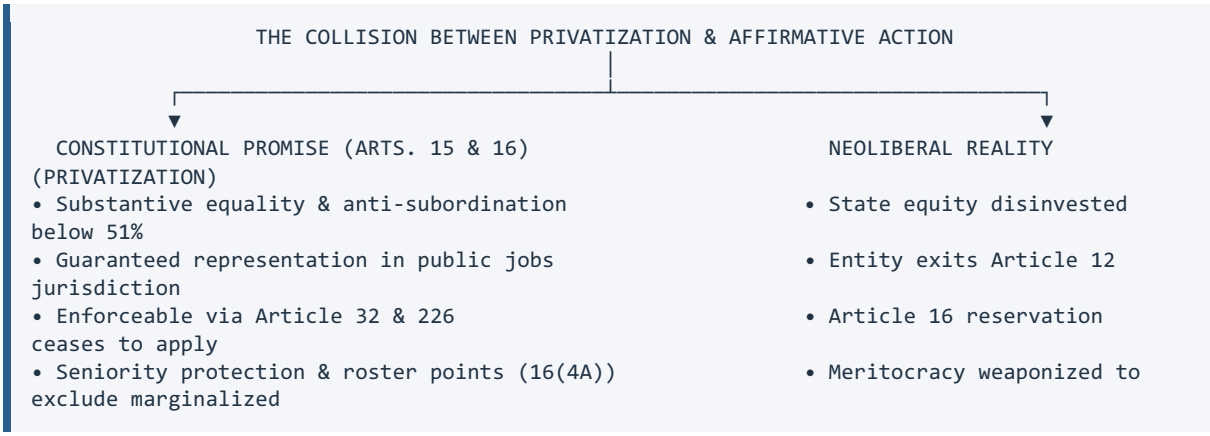
Questions Addressed:

- *2019, Q.4:* Comment critically on the "policy of privatization" which affects the principle of affirmative action, mentioned in the Constitution of India for bringing equality in the society? [25 Marks]
- *2018 (Set A), Q.3:* Privatization affects programme of affirmative action. Discuss. [25 Marks]
- *2018 (Set B), Q.3:* Privatization affects programme of affirmative action. Discuss. [25 Marks]

1. Introduction: The Constitutional Promise of Substantive Equality

The Indian Constitution does not embrace a sterile, formal concept of equality. Through **Articles 14, 15(4), 16(4), 16(4A), and 16(4B)**, the Framers instituted a robust regime of **Compensatory Discrimination / Affirmative Action** designed to remedy millennia of structural caste oppression, social ostracization, and economic exclusion.

Public Sector Undertakings (PSUs) such as BHEL, ONGC, SAIL, Indian Railways, and nationalized banks were the locomotive of this social revolution. By mandating 15% reservation for Scheduled Castes (SCs), 7.5% for Scheduled Tribes (STs), and 27% for Other Backward Classes (OBCs), public sector employment created a burgeoning, self-confident middle class among historically oppressed communities, fostering social mobility, administrative representation, and dignity.



2. How the Policy of Privatization Dismantles Affirmative Action

The aggressive policy of disinvestment and privatization has inflicted devastating systemic blows on the constitutional scheme of affirmative action:

68. **Shrinking of the Public Employment Pool:** Between 1991 and 2024, the proportion of organized sector jobs in the public domain has shrunk dramatically. As the State freezes recruitment, downsizes departments, and disinvests PSUs, the total number of reserved jobs declines in absolute terms.
69. **Loss of Article 12 Character and Immunity from Part III:** The moment a PSU is disinvested and transferred to private hands (as in ***BALCO Employees Union v. Union of India*, 2002**), it ceases to be an instrumentality of the State under Article 12. Consequently, **Article 16(4) becomes legally inapplicable**. The privatized company is under no constitutional obligation to recruit SC/ST/OBC candidates or maintain reservation rosters.
70. **Outsourcing and Contractualization:** Even within surviving government departments and PSUs, permanent posts subject to reservation are increasingly replaced by contractual, outsourced,

and gig-economy workers hired through third-party private staffing agencies. Because reservation rules do not strictly apply to short-term outsourced contracts, affirmative action is subverted through the back door.

71. **Disproportionate Impact on Marginalized Communities:** SC, ST, and OBC candidates depend disproportionately on public sector employment for upward socioeconomic mobility because private corporate recruitment often relies on informal networks, social capital, and unexamined biases disguised as "merit". Privatization without affirmative action effectively restores historic social exclusion.

3. The Judicial Response to Privatization and Workers' Rights

- ***BALCO Employees Union v. Union of India* (2002) 2 SCC 333:** The Supreme Court upheld the constitutional validity of the disinvestment policy, ruling that economic policies are outside the purview of judicial review unless patently illegal. The Court dismissed workers' concerns by noting that their service conditions were protected under labor laws, but **it conspicuously failed to preserve the constitutional mandate of affirmative action** post-disinvestment.
- ***Kapila Hingorani v. State of Bihar* (2003) 6 SCC 1:** The Court recognized that even when government companies collapse, the State cannot absolve itself of its human rights obligations under Article 21, affirming that the right to livelihood cannot be sacrificed at the altar of corporate insolvency.

4. Policy Debates: Affirmative Action in the Private Sector

To prevent the complete extinction of social justice in the post-privatization economy, intense legal and political debates have emerged:

72. **Voluntary Affirmative Action vs. Mandatory Legislation:**
    - *Corporate Stance:* Industry bodies (CII, FICCI, ASSOCHAM) strongly oppose mandatory reservations, arguing that statutory quotas impair competitiveness, efficiency, and foreign investment. They advocate voluntary codes of conduct, skill training, and supplier diversity.
    - *Social Justice Stance:* Experience has proven that voluntary corporate codes have yielded negligible SC/ST representation in corporate boardrooms and executive ranks.
73. **Statutory Affirmative Action via Law:**
    - The State has the constitutional competence under **Article 15(2) and Article 19(6)** to enact legislation requiring private employers benefiting from public subsidies, tax exemptions, and government land to adopt affirmative action and non-discriminatory hiring policies.
    - The **Sachar Committee (2006)** and **Thorat Committee** recommended the establishment of an **Equal Opportunity Commission (EOC)** and a **Diversity Index** to incentivize private employers to recruit under-represented social groups.
74. **Condition Precedent in Disinvestment Agreements (Share Purchase Agreements - SPA):**
    - When the Government disinvests its shares in a PSU, it can insert a mandatory covenant into the Share Purchase Agreement requiring the private buyer to maintain affirmative action quotas for existing and future employees as a continuing contractual and public condition of sale.

5. Conclusion & The Way Forward

Privatization without a social safety net threatens to roll back the historic gains of India's social justice movement. A Constitution committed to *Justice—social, economic, and political* cannot stand as a passive spectator while economic restructuring re-marginalizes its most vulnerable citizens.

To bridge this divide:

- Parliament must enact a comprehensive **Equal Opportunity Act** mandating transparency in private sector hiring and providing tax incentives for diverse workforces;
- Every disinvestment policy must include binding social obligations;
- The concept of the "State" must be expanded to hold any enterprise thriving on public resources accountable to the constitutional conscience of affirmative action.

MASTER BLUEPRINT 4 (3 MARKS)

Question Addressed:

- *2022, Part A – Q.1:* State the definition of 'State' under Article 12. [3 Marks]

Model Answer:

Under **Article 12** of the Constitution of India, unless the context otherwise requires, **"the State"** includes:

75. **The Government and Parliament of India** (Central Executive and Central Legislature);
76. **The Government and the Legislature of each of the States** (State Executives and State Legislatures);
77. **All Local Authorities** (such as Municipal Corporations, Municipal Councils, District Boards, Panchayats, and Port Trusts, as defined under Section 3(31) of the General Clauses Act, 1897); and
78. **Other Authorities** within the territory of India or under the control of the Government of India (which includes statutory corporations, government companies, and registered societies satisfying the "deep and pervasive state control" test laid down in ***Pradeep Kumar Biswas* (2002)** and the six-factor test in*** Ajay Hasia *(1981)**).

PART 6: Critical Commentary, Contemporary Controversies & Reform Commission Recommendations

1. The Challenge of "Surveillance Capitalism" and Big Tech Sovereignty

In the 21st-century digital society, the greatest threats to personal liberty, privacy, and free speech emanate not from traditional government bureaucrats, but from private digital platforms, data aggregators, and artificial intelligence corporations:

- **Evasion of Fundamental Rights:** When private messaging platforms or social media algorithms perform content moderation, facial recognition surveillance, or credit scoring, they exercise powers that rival sovereign states.
- **The Breakthrough in *Kaushal Kishor* (2023):** By holding that Articles 19 and 21 are directly enforceable against private entities, the Supreme Court has opened the door for citizens to

challenge corporate censorship and private data breaches without being stymied by the narrow boundaries of Article 12.

2. Public-Private Partnerships (PPP) and Municipal Outsourcing

The modern phenomenon of the State transferring municipal infrastructure (toll highways, water supply, sewage treatment, solid waste management) to private concessionaires under BOT (Build-Operate-Transfer) models creates an accountability void:

- Private concessionaires frequently raise tariffs arbitrarily, harass consumers, and evade RTI disclosures.
- As established in ***Janet Jeyapaul* (2015)** and* BCCI *(2015), High Courts must boldly apply Article 226** against private concessionaires whenever they exercise a public function that directly impacts the citizenry.

3. Major Reform Commission Recommendations on Article 12

REFORM PROPOSALS ON ARTICLE 12		
Commission / Report	Key Recommendations	Jurisprudential Impact
National Commission to Review the Working of the Constitution (NCRWC, 2002)	• Amend Article 12 to explicitly include any body exercising public functions	Awaiting constitutional amendment; partially achieved via Art. 226
National Commission for Scheduled Castes (NCSC)	• Mandatory affirmative action in private corporate sector & disinvested PSUs	Intensified national debate on private sector reservations
Sachar Committee & Thorat Committee Reports (2006)	• Enactment of Equal Opportunity Act • Diversity Index for hiring	Shifted focus from rigid quotas to diversity indices and incentives

79. **National Commission to Review the Working of the Constitution (NCRWC, 2002):**
    - Chaired by Justice M.N. Venkatachaliah, the Commission recommended amending Article 12 to add an **Explanation**:

> *"In this Article, 'other authorities' includes any person, body or institution which exercises public functions, or which is funded, controlled or supported by the State."*

    - This would have constitutionally entrenched the "Public Function Test" directly into Article 12, eliminating the artificial distinction between Article 32 and Article 226.
80. **National Commission for Scheduled Castes (NCSC):**
    - Has repeatedly recommended that a mandatory statutory framework be enacted to extend affirmative action to privatized public sector units and private enterprises that enjoy public subsidies, specialized economic zone (SEZ) benefits, and public land allocations.
81. **Conclusion:** Redefining the "State" is the foremost constitutional challenge of our time. A Part III that binds only the shrinking bureaucratic apparatus of the State, while leaving predatory private monopolies free to violate equality, privacy, and social justice, risks becoming a hollow constitutional monument. The Constitution must follow power wherever it resides.

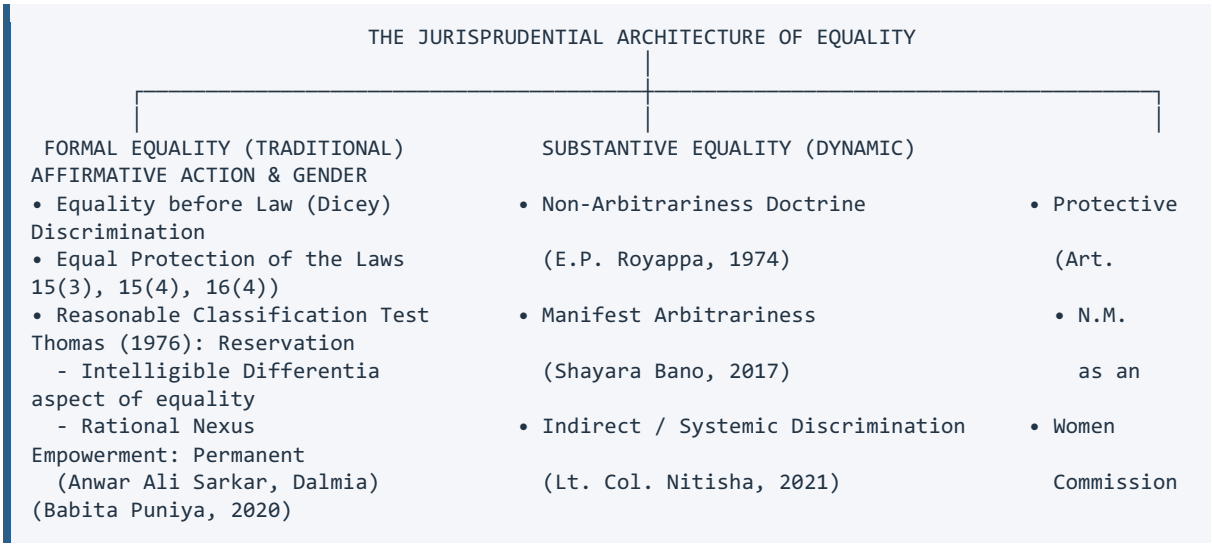
Paper 2: Indian Constitutional Law – The New Challenges

Master Study Material: Theme 3

THEME 3: Right to Equality, Affirmative Action & Gender Justice (Articles 14, 15, 16)

PART 1: Exhaustive Syllabus & Thematic Scope

The Right to Equality forms the foundational moral bedrock and structural cornerstone of the Indian constitutional edifice. Far from being a mechanical command of identical treatment, equality under the Indian Constitution is an active, transformative instrument designed to dismantle deep-seated caste hierarchies, patriarchal subjugation, and socioeconomic disparities.



Detailed Syllabus Breakdown:

82. **The Dialectic of Equality: Formal vs. Substantive Equality:**
    - The dual concepts in Article 14: "Equality before the law" (negative English concept of Rule of Law) and "Equal protection of the laws" (positive American concept of equal treatment in equal circumstances).
    - Aristotle's maxim: "Treating equals equally and unequals unequally." Why formal equality perpetuates historic injustice among unequal groups.
    - The evolution of Substantive Equality: Eliminating systemic structural barriers, recognizing indirect discrimination, and achieving equality of results.
83. **The Evolution of Judicial Tests under Article 14:**
    - *The Traditional Classification Test:*
        - *State of West Bengal v. Anwar Ali Sarkar* (1952) and *Ram Krishna Dalmia v. Justice Tendolkar* (1958).

    - The twin criteria: (a) Intelligible Differentia distinguishing persons grouped together from those left out; (b) Rational Nexus connecting the differentia to the statutory object.
    - Limitations of the classification doctrine: Risk of degenerating into formalistic judicial rubber-stamping of legislative categories.
- *The New / Dynamic Doctrine of Equality:*
    - *E.P. Royappa v. State of Tamil Nadu* (1974): Justice P.N. Bhagwati's breakthrough—Equality is a dynamic, living concept; "equality and arbitrariness are sworn enemies".
    - *Maneka Gandhi v. Union of India* (1978) & *Ramana Dayaram Shetty* (1979): Non-arbitrariness as an omnipresent constitutional command in administrative action.
    - *Shayara Bano v. Union of India* (2017): Elevation of "Manifest Arbitrariness" as a direct, independent ground to strike down plenary primary legislation.

84. **Affirmative Action and Compensatory Discrimination (Articles 15 & 16):**
    - Articles 15 and 16 as facets of Article 14: The paradigm shift from *Champakam Dorairajan* (1951) (reservations as an exception) to *State of Kerala v. N.M. Thomas* (1976) and *Indra Sawhney* (1992) (reservations as an intrinsic, emphatic manifestation of equality).
    - The Creamy Layer Doctrine (*Indra Sawhney*, 1992; *M. Nagaraj*, 2006; *Jarnail Singh*, 2018; *State of Punjab v. Davinder Singh*, 2024).
    - Economically Weaker Sections (EWS) reservation: 103rd Constitutional Amendment and *Janhit Abhiyan v. Union of India* (2022).
85. **Gender Justice and Legal Empowerment of Women:**
    - Protective Discrimination under Article 15(3): Special provisions for women as an instrument of substantive empowerment (*Yusuf Abdul Aziz*, 1954; *Government of A.P. v. P.B. Vijayakumar*, 1995).
    - Challenging Patriarchal Stereotypes in Employment:
        - *Air India v. Nargesh Meerza* (1981): Striking down pregnancy and early retirement rules for air hostesses as insulting to womanhood.
        - *C.B. Muthamma v. Union of India* (1979): Strikedown of service rules barring married women from foreign service.
        - *Ministry of Defence v. Babita Puniya* (2020): Grant of Permanent Commission to Women Officers in the Indian Army.
        - *Lt. Col. Nitisha v. Union of India* (2021): Pioneering recognition of **Indirect Discrimination** and systemic evaluation criteria biased against female life-cycles.
    - Protection against Gender-Based Violence & Sexual Autonomy:
        - *Vishaka v. State of Rajasthan* (1997) & POSH Act 2013: Workplace sexual harassment.
        - *Joseph Shine v. Union of India* (2018): Decriminalizing adultery (Section 497 IPC); rejecting Victorian notions of woman as husband's property.
        - *Navtej Singh Johar v. Union of India* (2018): Decriminalizing Section 377 IPC; affirming gender identity and sexual orientation under Article 15(1).
        - *Aparna Bhat v. State of M.P.* (2021): Barring patriarchal, misogynistic bail conditions.
        - *X v. Principal Secretary, Health & Family Welfare, GNCTD* (2022): Reproductive autonomy for unmarried women under Article 21.

- Political Empowerment: 73rd & 74th Amendments (Articles 243D & 243T) and the 106th Constitutional Amendment Act, 2023 (*Nari Shakti Vandan Adhiniyam* - 33% reservation in Lok Sabha and State Legislative Assemblies).

PART 2: Complete PYQ Question Bank (2015 – 2026)

> ⚠️ ***Note on Speculative Model Question:*** *The 2025–26 (Feb 2026) entry included below represents a forward-looking* ***speculative / model examination question*** *formulated on anticipated syllabus updates, rather than an archived historical sitting.*

All eight examination questions mapped to Theme 3 are reproduced below verbatim with their year, question number, and marks:

Year & Session	Question Identifier	Verbatim Examination Question Text	Prescribed Marks
Feb 2026 (2025–26) [Speculative / Model Projection]	Q.2	Elucidate the scope of Article 14 of the Indian Constitution. How has the judiciary interpreted the concept of reasonable classification in the context of substantive equality?	**25 Marks**
May 2025 (2024–25)	Q.4	Examine the Constitutional provisions of Articles 14, 15, and 16 concerning equality. How have these rights contributed to the legal empowerment of women in India?	**25 Marks**
June 2024	Q.3	"Fundamental Right to Equality" in the Constitution of India aims to bring social and economic justice in our country. Explain with various examples and decided case laws.	**25 Marks**
2022	Part A – Q.2	What is the Doctrine of Reasonable Classification?	**3 Marks**
2022	Part B – Q.7	Critically evaluate whether Constitutional measures for "Women Empowerment" have	**10 Marks**

		achieved substantive equality in India.	
2016	Q.2	"The claim of equality before the law is in substantial sense the most fundamental of the rights of a man. It occupies the first place in most written Constitutions." Comment with case laws.	**25 Marks**
2016	Q.7(b)	Empowerment of women.	**12.5 Marks**
2015 (Set A)	Q.4	'Fundamental right to Equality' in the Constitution of India aims at to bring social and economic justice in our country. Explain with various examples.	**25 Marks**

PART 3: Foundational Legal Framework & Constitutional Anatomy

1. Textual Dissection of Articles 14, 15, and 16

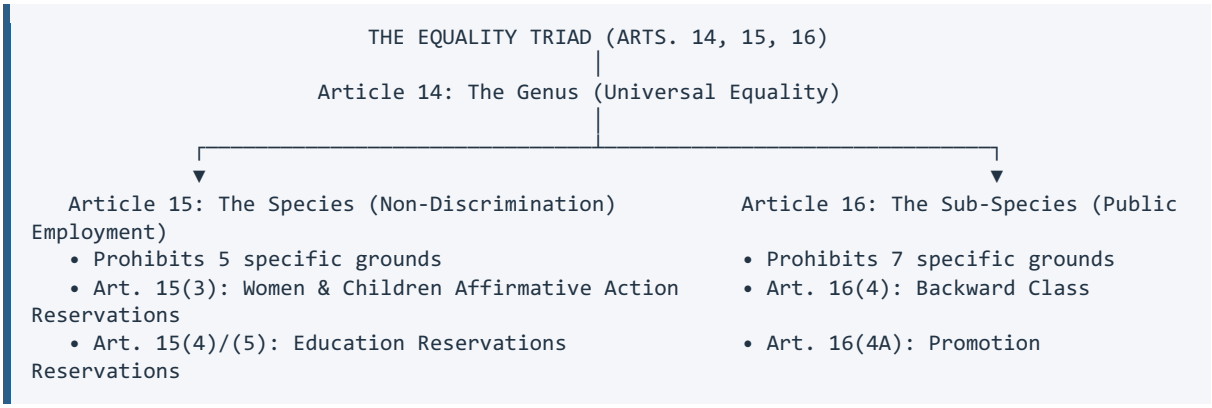
The equality code of the Indian Constitution is anchored in a triumvirate of provisions:

- **Article 14 (General Principle of Equality):**

> *"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."*

  - Applies to **all persons** (citizens, non-citizens, legal and natural persons, corporations).
  - Embodies two complementary concepts:
    86. *Equality before the law:* Negative in character; absent special privileges; all classes equally subject to ordinary law (Dicey's Rule of Law).
    87. *Equal protection of the laws:* Positive in character; equal laws applied to all in the same situation; like should be treated alike (14th Amendment to US Constitution).
- **Article 15 (Prohibition of Discrimination on Specified Grounds):**
  - *Article 15(1):* State shall not discriminate against any citizen on grounds **"only of religion, race, caste, sex, place of birth or any of them"**.
  - *Article 15(2):* Horizontal application against private citizens regarding access to shops, public restaurants, hotels, tanks, wells, and places of public resort.
  - *Article 15(3) (Protective Discrimination for Women & Children):* Special enabling provision empowering the State to enact affirmative measures for women and children.
  - *Article 15(4) & 15(5):* Special provisions and reservations in educational institutions for SEBCs, SCs, and STs.

    - *Article 15(6):* 103rd Amendment; up to 10% reservation for Economically Weaker Sections (EWS).
- **Article 16 (Equality of Opportunity in Public Employment):**
    - *Article 16(1):* Guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
    - *Article 16(2):* Bars discrimination on grounds only of religion, race, caste, sex, descent, place of birth, residence, or any of them.
    - *Article 16(4):* Enables reservations in appointments or posts in favor of any backward class of citizens not adequately represented in State services.
    - *Article 16(4A) & 16(4B):* Enables reservations in promotions with consequential seniority and protects carry-forward vacancies from the 50% ceiling.



2. The Doctrine of Reasonable Classification

Article 14 forbids class legislation, but permits reasonable classification. To be valid under Article 14, a legislative or executive classification must satisfy the **Two-Pronged Test** (*Ram Krishna Dalmia*, 1958):

88. **Intelligible Differentia:** The classification must be founded on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group.
89. **Rational Nexus:** The differentia must have a rational relation to the object sought to be achieved by the statute.

3. The New Dimension: Non-Arbitrariness and Substantive Equality

In ***E.P. Royappa v. State of Tamil Nadu* (1974)**, Justice Bhagwati emancipated Article 14 from the mechanical shackles of classification:

> *"Equality is a dynamic concept with many aspects and dimensions and it cannot be 'cribbed, cabined and confined' within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies... Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law."*

This doctrine was subsequently synthesized into the **"Manifest Arbitrariness"** test in ***Shayara Bano v. Union of India* (2017)**: An act or law is manifestly arbitrary when it is done capriciously, irrationally, without adequate determining principle, or in excessive disproportion to its object.

PART 4: Landmark & Contemporary Case Law Matrix

Case Name & Citation	Bench Strength & Year	Core Constitutional Issue	Ratio Decidendi & Legal Principles	Verbatim / Key Observation	Application in Exams
State of West Bengal v. Anwar Ali Sarkar AIR 1952 SC 75	7 Judges (1952)	Special courts established for "speedier trial" of certain offences; challenge under Article 14.	Law conferring unguided, arbitrary discretion on the executive to pick and choose cases violates Article 14. Formulated the **Intelligible Differentia and Rational Nexus** test.	*"Classification must be based on some real and substantial distinction bearing a just and reasonable relation to the objects sought to be attained."*	Classical bedrock authority for the traditional classification doctrine under Art. 14.
Ram Krishna Dalmia v. Justice Tendolkar AIR 1958 SC 538	5 Judges (1958)	Challenge to Commission of Inquiry under Commissions of Inquiry Act.	Codified the definitive principles of reasonable classification: Parliament can classify; presumption of constitutionality exists; classification can be based on geography, occupation, or time.	*"Article 14 forbids class legislation; it does not forbid reasonable classification for the purposes of legislation."* (Das CJ)	The locus classicus cited in every standard answer on reasonable classification.
E.P. Royappa v. State of Tamil Nadu (1974) 4 SCC 3	5 Judges (1974)	Arbitrary transfer and demotion of Chief Secretary; whether Article 14 is confined to classification.	Formulated the **New Doctrine of Equality**: Equality is dynamic, multi-dimensional, and antithetical to arbitrariness. Overruled the narrow view that Art. 14 is limited to classification.	*"Equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch."* (Bhagwati J.)	The historic turning point initiating the modern non-arbitrariness jurisprudence.
State of Kerala v. N.M. Thomas (1976) 2 SCC 310	7 Judges (1976)	Exemption granted to SC/ST employees from passing departmental	**Articles 15(4) and 16(4) are NOT exceptions** to Articles 15(1) and 16(1). They are	*"Article 16(4) is not an exception to Article 16(1), but is an*	Essential for proving that affirmative action is a tool of substantive

		tests for promotion.	emphatic facets and restatements of substantive equality under Article 14. Equality means real, practical equality.	*emphatic statement of what is inherent in Article 16(1)... To treat unequals equally is to perpetuate inequality."* (Mathew J.)	equality, not reverse discrimination.
Air India v. Nargesh Meerza (1981) 4 SCC 335	3 Judges (1981)	Air India service regulations forcing female flight attendants to retire upon first pregnancy or marriage within 4 years.	Regulations struck down as arbitrary, discriminatory, and offensive to human dignity under Article 14. Discrimination based on sex and marital/maternal status is unconstitutional.	*"The termination of services on first pregnancy is a most unreasonable and arbitrary provision... It is an insult to womanhood."*	Landmark early victory for gender justice and elimination of patriarchal workplace rules.
Vishaka v. State of Rajasthan (1997) 6 SCC 241	3 Judges (1997)	Gang-rape of Bhanwari Devi; complete absence of law governing workplace sexual harassment.	In the absence of domestic legislation, the Supreme Court exercised powers under Article 32 read with CEDAW to lay down legally binding **Vishaka Guidelines**, directly enforcing gender equality at workplaces.	*"Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right."* (Verma CJ)	Foundational authority for judicial activism in gender justice and international human rights incorporation.
Shayara Bano v. Union of India (2017) 9 SCC 1	5 Judges (2017)	Constitutional validity of Talaq-e-Biddat (Triple Talaq) under Articles 14, 15, and 21.	Declared instantaneous Triple Talaq void and unconstitutional. Established that primary legislation or recognized customs can be struck down for **Manifest Arbitrariness** under Article 14.	*"Manifest arbitrariness is something done by the legislature capriciously, irrationally or without adequate determining principle... It is a direct ground to invalidate law under*	Breakthrough ruling making manifest arbitrariness a ground of judicial review.

				Article 14." (Nariman J.)	
Joseph Shine v. Union of India (2018) 2 SCC 189	5 Judges (2018)	Constitutional validity of Section 497 IPC (Adultery) penalizing the paramour but treating woman as victim/property.	Struck down Section 497 IPC as unconstitutional. The provision treated the woman as the chattel/property of her husband, institutionalized patriarchal subordination, and violated Articles 14, 15, and 21.	*"True equality requires that women be treated as independent, autonomous beings possessing agency, not as appendages or property of their husbands."* (Chandrachud J.)	Leading authority on feminist constitutionalism and dismantling institutional patriarchy.
Navtej Singh Johar v. Union of India (2018) 10 SCC 1	5 Judges (2018)	Decriminalization of consensual same-sex relations under Section 377 IPC; gender identity and Article 15.	Section 377 unconstitutional to the extent it criminalizes consensual adult same-sex acts. "Sex" in Article 15(1) includes gender identity and sexual orientation; moral policing cannot override constitutional morality.	*"Constitutional morality must triumph over public morality... Equality demands that every individual, regardless of gender identity or orientation, enjoys full dignity."* (Misra CJ)	Transformative constitutionalism expanding Article 15 protection beyond biological sex.
Ministry of Defence v. Babita Puniya (2020) 7 SCC 469	2 Judges (2020)	Denial of Permanent Commission (PC) to Women Short Service Commission (WSSC) officers in the Indian Army.	Denying Permanent Commission to women officers on stereotypes regarding physiological differences and domestic responsibilities held discriminatory under Articles 14 and 15. Ordered grant of PC to women officers.	*"To cast aspersions on the ability of women officers based on sex stereotypes insults their dignity and violates the fundamental promise of equality under Article 14."* (Chandrachud J.)	Historic milestone dismantling institutional barriers to gender equality in the Armed Forces.
Lt. Col. Nitisha v.	2 Judges (2021)	Implementation of Babita Puniya;	Formulated the doctrine of	*"A rule that is facially neutral*	The definitive Indian precedent

Union of India (2021) 4 SCC 727		discriminatory medical assessment criteria applied retrospectively to female officers.	**Indirect / Systemic Discrimination**. Even if a rule appears facially neutral, if its practical application disproportionately harms women due to historical structures, it violates Article 14.	*may still be discriminatory if its operation produces a disparate, adverse impact on women. Substantive equality mandates addressing systemic indirect discrimination."*	on Indirect Discrimination and Substantive Equality.
State of Punjab v. Davinder Singh (2024) INSC 562	7 Judges (2024)	Constitutional validity of sub-classification among Scheduled Castes for affirmative action (overruling *E.V. Chinnaiah*).	Sub-classification within Scheduled Castes is constitutionally permissible under Articles 14, 15, and 16 to achieve substantive equality. Creamy layer principle applies to SCs and STs.	*"Equality is not formal; it must reach the most marginalized within marginalized groups. Sub-classification furthers the constitutional mandate of substantive equality."*	Groundbreaking 7-Judge Bench authority on substantive equality and affirmative action sub-classification.

PART 5: Master Examination Answer Blueprints

MASTER BLUEPRINT 1 (25 MARKS)

Question Addressed:

- *Feb 2026 (2025–26) [Speculative / Model Projection], Q.2:* Elucidate the scope of Article 14 of the Indian Constitution. How has the judiciary interpreted the concept of reasonable classification in the context of substantive equality? [25 Marks]

1. Introduction & The Dual Dimensions of Article 14

Article 14 is the foundational charter of Indian egalitarianism. Textually, it incorporates two distinct legal doctrines:

90. **"Equality before the law":** Originating in English common law and articulated by **A.V. Dicey** as the second postulate of the Rule of Law, it is a negative concept asserting that no person is above the law and all persons are equally subject to the jurisdiction of ordinary courts.
91. **"Equal protection of the laws":** Borrowed from Section 1 of the **14th Amendment to the US Constitution**, it is a positive concept mandating that the State must provide equal legal protection, rights, and privileges to all persons situated in similar circumstances.

True equality cannot exist where persons in fundamentally unequal circumstances are subjected to identical rules. As **Justice Subba Rao** memorably observed, *"You cannot race a cart-horse against a thoroughbred."* Hence, the judicial interpretation of Article 14 has progressed through three conceptual epochs:

- **Phase I (Formal Equality & Classification):** *Anwar Ali Sarkar* (1952) and *Ram Krishna Dalmia* (1958);
- **Phase II (Substantive Non-Arbitrariness):** *E.P. Royappa* (1974) and *Maneka Gandhi* (1978);
- **Phase III (Transformative Substantive Equality & Indirect Discrimination):** *Shayara Bano* (2017) and *Lt. Col. Nitisha* (2021).

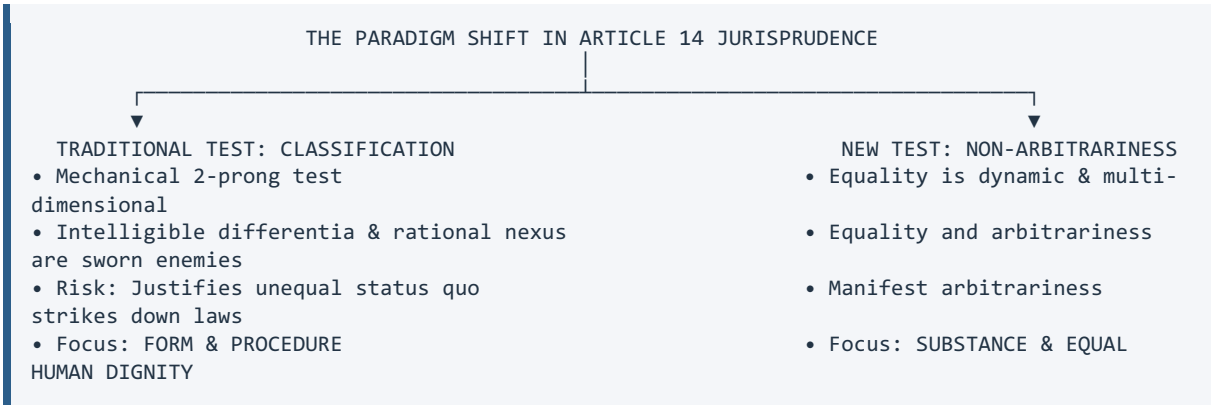
2. The Traditional Doctrine of Reasonable Classification

Recognizing that the Legislature must differentiate between different groups to govern effectively, the Supreme Court established that Article 14 forbids **class legislation**, but permits **reasonable classification** (*Chiranjit Lal Chowdhuri v. Union of India*, 1951).

In ***Ram Krishna Dalmia v. Justice Tendolkar* (AIR 1958 SC 538)**, Chief Justice S.R. Das formulated the classical **Two-Fold Test**:

92. **Intelligible Differentia:** The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group. The differentia can be geographic, occupational, temporal, or demographic.
93. **Rational Nexus:** The differentia must have a rational and direct relation to the object sought to be achieved by the statute.

The Trap of Over-Classification: In ***State of West Bengal v. Anwar Ali Sarkar* (1952)**, the West Bengal Special Courts Act allowed the State government to refer "any cases or offences" to special courts for "speedier trial". The 7-Judge Bench struck down the provision, holding that the vague pursuit of "speedier trial" without clear legislative standards failed the nexus test and amounted to unguided executive caprice.



3. The New Dimension: Non-Arbitrariness as Equality

By the 1970s, the mechanical application of the classification test threatened to reduce Article 14 into a rigid procedural formula where any clever legislative categorization could pass muster.

In ***E.P. Royappa v. State of Tamil Nadu* (1974) 4 SCC 3**, Justice P.N. Bhagwati revolutionized Indian constitutional law:

> *"Equality is a dynamic concept with many aspects and dimensions and it cannot be 'cribbed, cabined and confined' within traditional and doctrinaire limits... Equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal."*

This non-arbitrariness doctrine was reaffirmed in ***Maneka Gandhi v. Union of India* (1978)** ***(connecting Articles 14, 19, and 21 as a Golden Triangle) and*** Ramana Dayaram Shetty *(1979)** (government cannot act arbitrarily in awarding state contracts).

4. Substantive Equality and Indirect Discrimination

In the modern era, the Supreme Court has recognized that reasonable classification must be interpreted through the prism of **Substantive Equality**:

94. **Affirmative Action as Equality:** In ***State of Kerala v. N.M. Thomas* (1976)**, the 7-Judge Bench established that classification is not a mere exception to equality, but its very engine. Treating unequals as equals reinforces existing caste and economic oppression.
95. **Sub-Classification within Backward Classes:** In ***State of Punjab v. Davinder Singh* (2024 INSC 562)**, a 7-Judge Constitution Bench held that reasonable classification permits the State to create sub-quotas within Scheduled Castes to ensure that affirmative action benefits reach the most downtrodden and destitute sub-castes.
96. **The Doctrine of Indirect Discrimination (*Lt. Col. Nitisha*, 2021):** The Court held that equality analysis cannot stop at examining whether a rule is facially neutral. If a seemingly neutral classification disproportionately disadvantages a marginalized group (e.g., applying male physiological benchmark standards to female officers seeking Permanent Commission), it constitutes **systemic indirect discrimination** and violates Article 14.

5. Conclusion

The journey of Article 14 from *Anwar Ali Sarkar* to *Lt. Col. Nitisha* and *Davinder Singh* represents the triumph of **transformative constitutionalism**. Reasonable classification is no longer a device to justify administrative convenience; it is an active, egalitarian obligation requiring the State and the judiciary to dismantle structural inequalities and achieve real, substantive justice for all.

MASTER BLUEPRINT 2 (25 MARKS)

Questions Addressed:

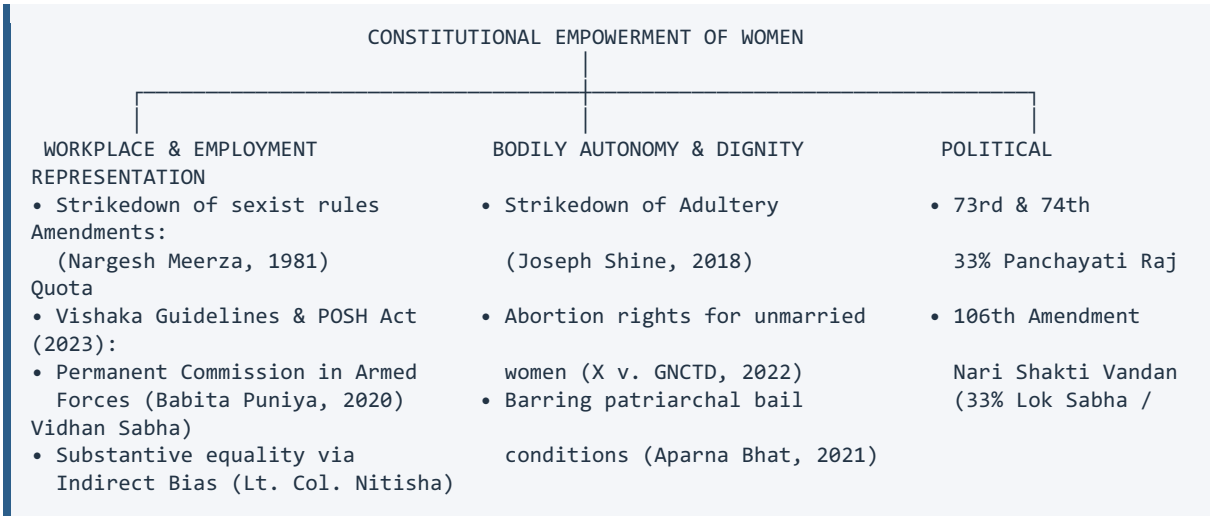
- *May 2025 (2024–25), Q.4:* Examine the Constitutional provisions of Articles 14, 15, and 16 concerning equality. How have these rights contributed to the legal empowerment of women in India? [25 Marks]
- *2022, Part B – Q.7:* Critically evaluate whether Constitutional measures for "Women Empowerment" have achieved substantive equality in India. [10 Marks]
- *2016, Q.7(b):* Empowerment of women. [12.5 Marks]

1. Introduction: The Constitutional Blueprint for Gender Justice

When the Constitution of India was adopted in 1950, it boldly introduced universal adult suffrage and recognized women as equal sovereign citizens in a society characterized by entrenched patriarchal structures, purdah, dowry, child marriage, and institutional subjugation.

The Framers constructed an interlocking **Equality Code** across **Articles 14, 15, and 16**:

- **Article 14:** Guarantees universal equality before the law and non-arbitrariness;
- **Article 15(1):** Expressly prohibits discrimination on the ground of **"sex"**;
- **Article 15(3):** Provides an affirmative constitutional charter of **Protective Discrimination**, authorizing the State to make *"special provisions for women and children"*;
- **Article 16(1) & 16(2):** Guarantees equality of opportunity in public employment and forbids discrimination based on sex.



2. Protective Discrimination under Article 15(3): Scope and Jurisprudence

Article 15(3) is an express recognition by the Framers that formal equality would leave women trapped in historical disadvantages.

- In ***Government of Andhra Pradesh v. P.B. Vijayakumar* (1995) 4 SCC 520**, the Supreme Court upheld affirmative state action granting preference and direct reservations to women in state employment. The Court held that Article 15(3) is not a mere proviso to Article 15(1), but an independent power enabling the State to eliminate gender disparity through positive measures.
- In ***Dattatraya Motiram v. State of Bombay* (AIR 1953 Bom 311)**, Chief Justice Chagla held that Article 15(3) permits discrimination in favor of women, but does not permit discrimination *against* women.

3. Judicial Contribution to Women's Empowerment: Key Frontiers

The Supreme Court has acted as a transformative engine in converting the constitutional promises of Articles 14, 15, and 16 into tangible legal empowerment:

97. **Dismantling Patriarchal Workplace Stereotypes:**
    - In ***Air India v. Nargesh Meerza* (1981)**, service regulations terminating female air hostesses upon first pregnancy or marriage within four years of service were struck down as arbitrary, callous, and an insult to female dignity.
    - In ***C.B. Muthamma v. Union of India* (1979) 4 SCC 260**, Justice V.R. Krishna Iyer struck down Foreign Service rules requiring female diplomats to obtain government permission before marrying, famously calling it *"a lingering relic of the feudal past"*.
98. **Workplace Dignity and Freedom from Sexual Harassment:**

- In ***Vishaka v. State of Rajasthan* (1997) 6 SCC 241**, drawing upon **Articles 14, 19(1)(g), and 21**, read with the UN **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**, the Supreme Court formulated mandatory guidelines to prevent workplace sexual harassment, subsequently codified into the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act)**.

99. **Institutional Equality in the Armed Forces:**
    - In ***Ministry of Defence v. Babita Puniya* (2020) 7 SCC 469**, the Court rejected the Union's arguments citing women's physical capabilities and family responsibilities, ordering the grant of Permanent Commission to women officers.
    - In ***Lt. Col. Nitisha v. Union of India* (2021) 4 SCC 727**, the Court formulated the doctrine of **Indirect Discrimination**, ordering the revision of flawed medical benchmark criteria that discriminated against female biological reality.
100. **Bodily Autonomy, Dignity, and Sexual Decisional Autonomy:**
    - In ***Joseph Shine v. Union of India* (2018) 2 SCC 189**, the Court struck down Section 497 IPC (Adultery), holding that treating women as the property or chattel of their husbands violates Articles 14 and 15.
    - In ***X v. Principal Secretary, Health & Family Welfare, GNCTD* (2022)**, the Supreme Court interpreted the Medical Termination of Pregnancy (MTP) Act in light of Article 14 and 21, affirming that unmarried women have an equal right to safe and legal abortion up to 24 weeks on par with married women.
    - In ***Aparna Bhat v. State of M.P.* (2021)**, the Court issued strict directives prohibiting trial courts and High Courts from imposing patriarchal, misogynistic bail conditions (such as directing an accused to tie a Rakhi to the sexual assault victim).

4. Political Empowerment: From Grassroots to Parliament

- **Panchayati Raj (Articles 243D & 243T):** The 73rd and 74th Amendments reserved not less than one-third of total seats and chairperson posts for women, creating over 1.4 million female grassroots leaders across India.
- **The 106th Constitutional Amendment Act, 2023 (*Nari Shakti Vandan Adhiniyam*):** Inserts **Articles 330A, 332A, and 239AA(2)(b)**, providing **33% reservation for women in the Lok Sabha, State Legislative Assemblies, and the Legislative Assembly of NCT of Delhi**. This represents the culmination of a three-decade constitutional battle for national legislative representation.

5. Critical Evaluation: Have We Achieved Substantive Equality?

While constitutional and legal measures have established formal equality and landmark victories, **substantive equality remains an unfinished revolution**:

- *Declining Female Labour Force Participation (FLFPR):* Despite educational parity, female workforce participation in India remains low compared to global averages, driven by the unequal burden of unpaid domestic care work.
- *Informal Sector Vulnerability:* Over 90% of working women are in the unorganized sector (domestic workers, agricultural laborers, gig workers) where POSH protections and maternity benefits (Maternity Benefit Amendment Act 2017) are virtually unenforceable.
- *Entrenched Social Realities:* Dowry deaths, sex-selective abortions (PNDT Act violations), and domestic violence persist despite stringent legislation.

6. Conclusion

The constitutional trio of Articles 14, 15, and 16 has functioned as an indispensable legal weapon for Indian women, moving them from passive beneficiaries of state paternalism to autonomous rights-bearing agents. True substantive equality requires translating constitutional doctrine into structural societal change, eliminating patriarchal stereotypes, and ensuring that reproductive, economic, and political autonomy are accessible to every Indian woman.

MASTER BLUEPRINT 3 (3 MARKS)

Question Addressed:

- *2022, Part A – Q.2:* What is the Doctrine of Reasonable Classification? [3 Marks]

Model Answer:

The **Doctrine of Reasonable Classification** is a judicial test developed under **Article 14** of the Constitution of India (*State of West Bengal v. Anwar Ali Sarkar*, 1952; *Ram Krishna Dalmia v. Justice Tendolkar*, 1958) which permits the Legislature to classify persons, things, or transactions into distinct categories for targeted governance.

To be constitutionally valid, the classification must satisfy two cumulative conditions:

101. **Intelligible Differentia:** The classification must be founded on an intelligible and real distinction that separates the group included from those excluded.
102. **Rational Nexus:** The differentia must have a rational and direct relationship to the specific object sought to be achieved by the statute. Article 14 forbids arbitrary class legislation, but permits reasonable classification.

PART 6: Critical Commentary, Contemporary Controversies & Reform Commission Recommendations

1. Transformative Constitutionalism & The Rejection of Moral Majoritarianism

In contemporary Indian jurisprudence, equality has been unshackled from social orthodoxies through the doctrine of **Transformative Constitutionalism** (*Navtej Johar*, 2018; *Joseph Shine*, 2018). The Supreme Court has repeatedly affirmed that:

- "Constitutional morality" must prevail over "public or social morality".
- Discrimination based on patriarchal conventions, historical prejudices, or religious taboos cannot survive constitutional scrutiny under Articles 14 and 15.

2. The Creamy Layer Conundrum in SC/ST Affirmative Action

The landmark 7-Judge Constitution Bench judgment in ***State of Punjab v. Davinder Singh* (2024 INSC 562)** has reshaped affirmative action:

- **Sub-Classification Upheld:** States can create sub-categories within SCs and STs to prioritize benefits for the most marginalized sub-castes (such as Valmikis and Mazhabi Sikhs in Punjab, or Arunthathiyars in Tamil Nadu).
- **Extension of Creamy Layer:** Multiple judges on the Bench explicitly observed that the "creamy layer" principle must be applied to SCs and STs to prevent a small, privileged generational elite from monopolizing affirmative action benefits, ensuring that equality reaches the truly destitute.

3. Major Reform Commission Recommendations on Equality & Gender Justice

REFORM COMMISSIONS ON GENDER EQUALITY		
Commission / Committee	Key Recommendations	Status / Legislative Act
Justice Verma Committee Report (2013)	• Strict laws on rape & POSH • End marital rape exemption • Workplace safety monitoring	Criminal Law (Amendment) Act 2013 enacted; marital rape in litigation
High Level Committee on the Status of Women in India (2015)	• 50% reservation in local bodies; 33% in Parliament • Equal property inheritance	106th Amendment (2023) enacted for 33% Lok Sabha / Vidhan Sabha
Law Commission of India (Reports 242, 267)	• Criminalize discriminatory honor killings • Hate speech & equality	Incorporated partially in judicial guidelines & special state laws

103. **Justice J.S. Verma Committee (2013):**

- Recommended comprehensive criminal law reforms post-Nirbhaya; mandated zero-tolerance for workplace harassment and police non-registration of FIRs; recommended deleting the exception for marital rape under Section 375 IPC.

104. **High-Level Committee on the Status of Women in India (2015):**

- Recommended enacting a comprehensive **Anti-Discrimination Law** to address both direct and indirect discrimination in the private and public sectors.
- Recommended fast-tracking the Women's Reservation Bill and introducing gender-responsive budgeting across all government departments.

105. **Conclusion:** The constitutional promise of equality under Articles 14, 15, and 16 is not a static legal trophy. It is a continuous, relentless egalitarian struggle to transform Indian society from a hierarchy of inherited privilege and gender subjugation into a vibrant, substantive democracy of dignified equals.

Paper 2: Indian Constitutional Law – The New Challenges

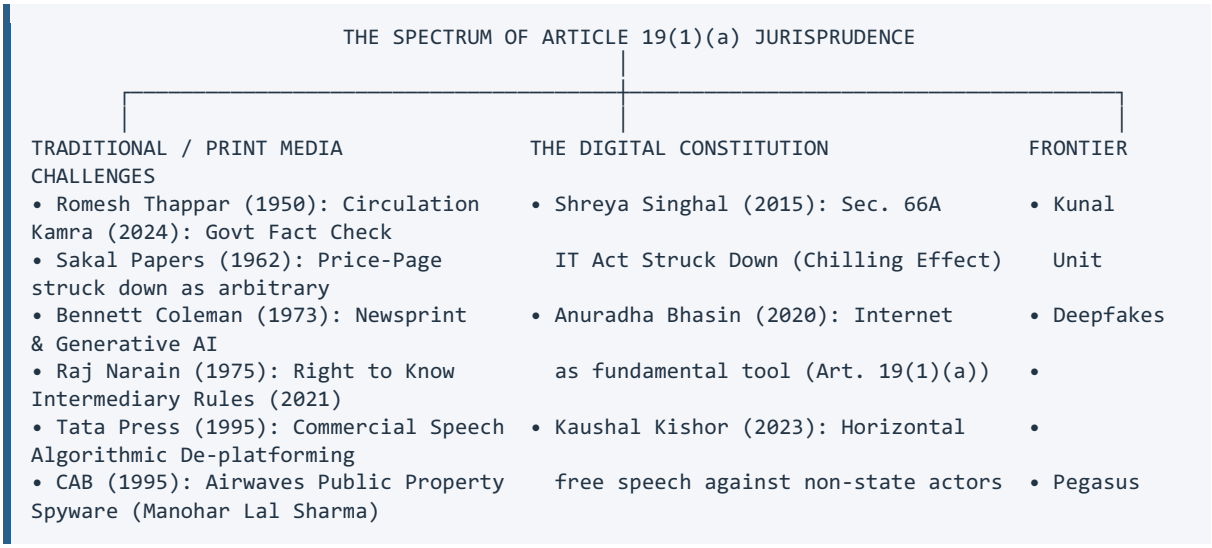
Master Study Material: Theme 4

THEME 4: Freedom of Speech and Expression, Media & Emerging Technologies (Article 19)

PART 1: Exhaustive Syllabus & Thematic Scope

Freedom of speech and expression is universally celebrated as the "mother of all liberties" and the lifeblood of constitutional democracy. In the words of the Supreme Court, it is the primary condition of liberty and the indispensable medium through which democratic self-governance, scientific advancement, and individual self-fulfillment are attained.

Over the past seven decades, Indian free speech jurisprudence has expanded from defending print newspapers against post-colonial censorship to confronting the disruptive frontiers of cyberspace, internet shutdowns, surveillance capitalism, artificial intelligence, deepfakes, and algorithmic content moderation.



Detailed Syllabus Breakdown:

106. **The Architecture of Article 19(1)(a):**

- The constitutional guarantee: *"All citizens shall have the right to freedom of speech and expression."*
- Theoretical justifications for free speech:
  - John Stuart Mill's "Marketplace of Ideas" (truth emerges through contestation);
  - Alexander Meiklejohn's theory of "Democratic Self-Governance";
  - Ronald Dworkin and Thomas Scanlon's theory of "Individual Autonomy and Self-Fulfillment".

107. **Implicit Facets of Freedom of Speech:**

- Freedom of the Press: Absence of an express mention; why the Framers considered a separate clause redundant (*Romesh Thappar*, *Brij Bhushan*, *Bennett Coleman*).
- Right to Information and the Citizen's Right to Know: Articles 19(1)(a) as the constitutional parent of the RTI Act, 2005 (*State of U.P. v. Raj Narain*, 1975; *S.P. Gupta*, 1981; *PUCL v. Union of India*, 2003 - voters' right to know candidates' criminal antecedents).
- Right to Remain Silent: *Bijoe Emmanuel v. State of Kerala* (1986) (Jehovah's Witnesses and the National Anthem).
- Commercial Speech and Advertising: Transition from *Hamdard Dawakhana* (1960) to *Tata Press Ltd. v. MTNL* (1995) (commercial speech protected as an aid to consumers' right to make informed choices).
- Right to Broadcast: *Secretary, Ministry of I&B v. Cricket Association of Bengal* (1995) (airwaves are public property and cannot be monopolized by the State).

108. **The Exhaustive Boundaries of Article 19(2):**

- The eight exhaustive, closed grounds of restriction:
  109. Sovereignty and integrity of India (added by 16th Amendment, 1963);
  110. Security of the State;
  111. Friendly relations with foreign States (added by 1st Amendment, 1951);
  112. Public order (added by 1st Amendment, 1951);
  113. Decency or morality;
  114. Contempt of court;
  115. Defamation;
  116. Incitement to an offence.
- The Requirement of "Reasonableness": Procedural and substantive reasonableness; the standard of an ordinary, prudent citizen, not an hypersensitive mind (*K.A. Abbas v. Union of India*, 1970).
- The Test of Proximity / Direct Incitement: The metaphor of the *"spark in a powder keg"* (*S. Rangarajan v. P. Jagjivan Ram*, 1989; *Ram Manohar Lohia*, 1960).
- The Sedition Conundrum (Section 124A IPC / Section 152 Bharatiya Nyaya Sanhita): *Kedar Nath Singh v. State of Bihar* (1962) vs. *S.G. Vombatkere v. Union of India* (2022) (keeping sedition in abeyance).

117. **The Digital Era & Scientific Developments:**

- The Death of Section 66A IT Act: *Shreya Singhal v. Union of India* (2015) (distinction between discussion, advocacy, and incitement; vagueness and overbreadth causing a severe "chilling effect").
- Internet Access as a Fundamental Medium: *Anuradha Bhasin v. Union of India* (2020) (indefinite internet blackouts unconstitutional; proportionality doctrine applied to telecom suspension rules).
- State Surveillance and Digital Privacy: *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017) (privacy as the necessary precondition of free speech) and *Manohar Lal Sharma v. Union of India* (2021) (Pegasus spyware probe; national security cannot be a phantom defense).

- Government Censorship via Fact-Check Units: Challenging the 2023 Amendment to the IT Intermediary Rules (*Kunal Kamra v. Union of India*, Bombay HC 2024 / Supreme Court stay).
- Generative Artificial Intelligence, Deepfakes, and Synthetic Media: Balancing democratic discourse against synthetic defamation, electoral misinformation, and algorithmic bias.

PART 2: Complete PYQ Question Bank (2015 – 2026)

All seven examination questions mapped to Theme 4 are reproduced below verbatim with their year, question number, and marks:

Year & Session	Question Identifier	Verbatim Examination Question Text	Prescribed Marks
May 2025 (2024–25)	Q.2	Analyse the scope of the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Indian Constitution. How has the Supreme Court defined its boundaries in the digital era?	**25 Marks**
June 2024	Q.4	Throw light on the constitutional provisions of Fundamental Right to Freedom of Speech, Freedom of Press and the new challenges of scientific development.	**25 Marks**
2022	Part A – Q.4	What are reasonable restrictions under Article 19(2)?	**3 Marks**
2022	Part B – Q.5	Analyse emerging issues and challenges with respect to freedom of speech in the era of social media and internet censorship.	**10 Marks**
2016	Q.3	Explain changing dimension of freedom of speech and expression, with the help of judicial pronouncements.	**25 Marks**
2015 (Set A)	Q.6	Throw light on constitutional provisions of Fundamental Right to Freedom of Speech, Freedom to press and	**25 Marks**

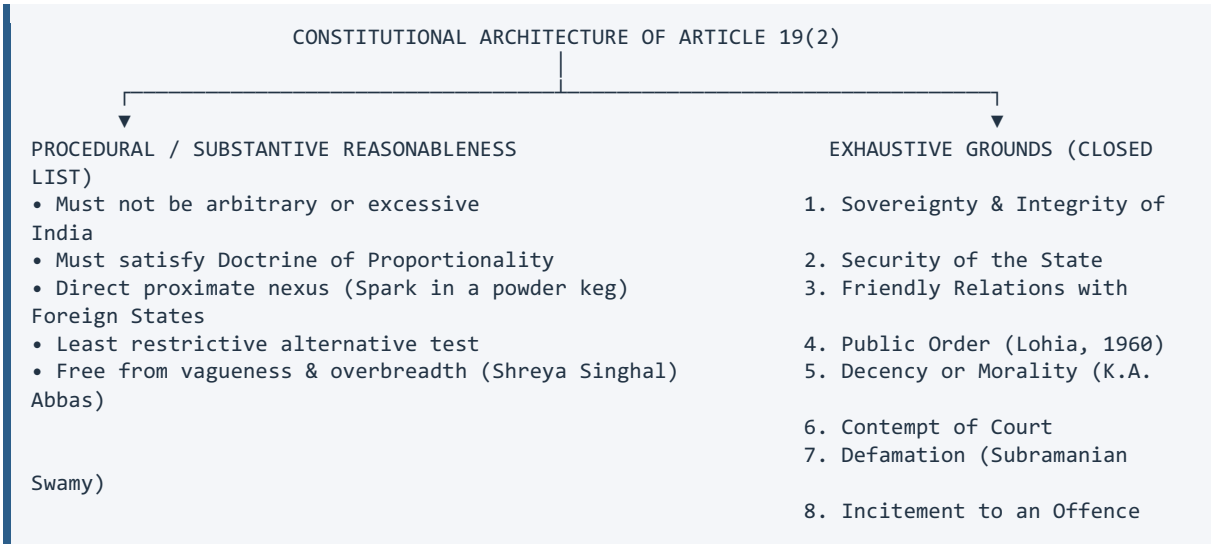
		new challenges of scientific developments.	
2015 (Set B)	Q.3(a)	Freedom of speech and Expression.	**12.5 Marks**

PART 3: Foundational Legal Framework & Constitutional Anatomy

1. Constitutional Text: Article 19(1)(a) and Article 19(2)

- **Article 19(1)(a):** *"All citizens shall have the right to freedom of speech and expression."*
  - Applies strictly to **citizens** (though corporate entities can assert it through their citizen-shareholders as held in *Bennett Coleman*, 1973).
- **Article 19(2) (The Permissible Restrictions):**

> *"Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence."*



2. The Golden Principles of Reasonable Restriction

The Supreme Court has firmly established that:

118. **The Grounds are Exhaustive:** The State cannot invent new grounds of restriction outside the eight listed in Article 19(2) (*Sakal Papers*, 1962). Restrictions cannot be imposed on vague grounds like "administrative convenience" or "financial burden".

119. **"Public Order" vs. "Law and Order":** In ***Superintendent, Central Prison v. Dr. Ram Manohar Lohia* (1960)**, the Court drew three concentric circles:
   - Outer circle: *Law and order*;
   - Middle circle: *Public order*;
   - Inner circle: *Security of the State*.

Every breach of the peace does not threaten public order. Public order implies comprehensive public tranquility affecting the community at large.

120. **The Proximity Rule (Clear and Present Danger):** In ***S. Rangarajan v. P. Jagjivan Ram* (1989) 2 SCC 574**, the Court held that the restriction must have a direct, imminent, and proximate connection with public danger:

> *"The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to public interest. In other words, the relation between speech and danger should be like that of a spark in a powder keg."*

121. **The Doctrine of Proportionality:** Synthesized in ***Modern Dental College* (2016)** and** K.S. Puttaswamy *(2017)**:

- Legitimate state aim;
- Rational connection between measure and goal;
- Necessity (least restrictive means);
- Proportionality stricto sensu (balance between societal benefit and rights encroachment).

3. Statutory Regimes Governing Digital Speech

- **Information Technology Act, 2000:**
  - Section 66A: Penalized sending "offensive messages" via computer; struck down in *Shreya Singhal* (2015).
  - Section 69A: Empowers Central Government to issue blocking directions to intermediaries on Article 19(2) grounds, subject to procedural safeguards (*Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009*).
  - Section 79: "Safe Harbour" protection for intermediaries, provided they observe due diligence.
- **Telecom Suspension Rules, 2017 (under Telegraph Act, 1885):** Regulates internet shutdowns, subjected to mandatory periodic review and proportionality in *Anuradha Bhasin* (2020).
- **IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021:** Imposes grievance redressal mechanisms, traceability mandates on end-to-end messaging, and code of ethics on digital news platforms.

PART 4: Landmark & Contemporary Case Law Matrix

Case Name & Citation	Bench Strength & Year	Core Constitutional Issue	Ratio Decidendi & Legal Principles	Verbatim / Key Observation	Application in Exams
Romesh Thappar v. State of Madras AIR 1950 SC 124	5 Judges (1950)	Ban on entry and circulation of weekly journal *Cross Roads* in Madras under Maintenance of	Freedom of speech includes freedom of propagation of ideas, which is ensured through **freedom of circulation**.	*"Freedom of speech and of the press lay at the foundation of all democratic organisations, for without free*	Foundational locus classicus on freedom of the press and circulation. Led to 1st Constitutional Amendment.

		Public Order Act.	Banning circulation without proximate threat to security of the State violates Article 19(1)(a).	*political discussion no public education... is possible."* (Patanjali Sastri J.)	
Sakal Papers v. Union of India AIR 1962 SC 305	5 Judges (1962)	Daily Newspapers (Price and Page) Order, 1960 regulating the number of pages a newspaper could publish based on price.	Freedom of speech cannot be restricted for commercial or economic regulation. The State cannot curb the volume or circulation of a newspaper under the guise of preventing unfair competition.	*"The freedom of a newspaper to publish any number of pages or to circulate it to any number of persons has each its place in the freedom of speech and cannot be restricted for non-Article 19(2) grounds."*	Establishes that economic or anti-monopoly grounds cannot be used to indirectly stifle free speech.
Bennett Coleman & Co. v. Union of India (1972) 2 SCC 788	5 Judges (1972)	Newsprint Import Control Policy imposing 10-page ceiling on newspapers.	The policy was struck down. The direct effect and consequence test was applied. A shareholder who is a citizen can enforce corporate newspaper rights under Article 19(1)(a).	*"The press has no special rights which are not to be given to an individual. The freedom of the press is the freedom of citizens to write and publish."*	Leading authority on indirect restrictions, newsprint rationing, and citizen-shareholder locus standi.
Bijoe Emmanuel v. State of Kerala (1986) 3 SCC 615	2 Judges (1986)	Expulsion of three Jehovah's Witness schoolchildren for respectfully refusing to sing the National Anthem due to religious beliefs.	Freedom of speech and expression under Article 19(1)(a) includes the **Right to Remain Silent**. Expulsion violated both Article 19(1)(a) and Article 25. Standing respectfully does not show disrespect.	*"Our tradition teaches tolerance; our philosophy preaches tolerance; our Constitution practises tolerance; let us not dilute it."* (Chinnappa Reddy J.)	Landmark precedent on the negative right: the right not to speak or sing.

S. Rangarajan v. P. Jagjivan Ram (1989) 2 SCC 574	3 Judges (1989)	Revocation of censor certificate for Tamil film *U-Needham* criticizing caste reservations, due to violent threats from groups.	The State cannot bow to the "heckler's veto" or blackmail by threatening mobs. Formulated the **"Spark in a Powder Keg"** test of direct proximity between speech and violence.	*"The State cannot plead its inability to handle the hostile audience problem. It is its duty to protect the freedom of expression."*	Uncompromising protection against mob censorship and heckler's veto.
Tata Press Ltd. v. MTNL (1995) 5 SCC 139	3 Judges (1995)	MTNL's challenge to publication of Yellow Pages (commercial advertisements) by Tata Press.	Overruled narrow holding in *Hamdard Dawakhana*. **Commercial Speech (Advertising) is protected under Article 19(1)(a)** because it disseminates vital information enabling consumers to make economic choices.	*"Advertising is the cornerstone of our economic system... Low cost of newspapers is due to revenue from advertisements. Commercial speech is protected under Article 19(1)(a)."*	Definitive precedent bringing commercial advertising into the fold of Article 19(1)(a).
Shreya Singhal v. Union of India (2015) 5 SCC 1	2 Judges (2015)	Constitutional validity of Section 66A of the Information Technology Act, 2000.	Section 66A struck down in its entirety. The provision was **vague, overbroad, and created a severe chilling effect**. Formulated the tripartite distinction: (1) Discussion; (2) Advocacy; (3) Incitement. Only incitement can be restricted.	*"Section 66A casts the net very wide... It takes within its sweep innocent speech. Clear boundaries between advocacy and incitement were obliterated."* (Nariman J.)	Magna Carta of Indian digital free speech; established the "chilling effect" doctrine.
Anuradha Bhasin v. Union of India (2020) 3 SCC 637	3 Judges (2020)	Indefinite internet suspension and movement restrictions in Jammu &	1. Freedom of speech and expression and freedom to practice trade over the	*"Expression through the internet has become an integral part of life. To curtail it*	Landmark authority on internet shutdowns, telecom suspension

		Kashmir post-abrogation of Article 370.	**internet is constitutionally protected** under Arts. 19(1)(a) & 19(1)(g). 2. An **indefinite suspension of internet services is illegal** under Telecom Suspension Rules. 3. Proportionality test applied; suspension orders must be published.	*indefinitely without showing imminent necessity is an abuse of statutory power."* (Ramana J.)	rules, and digital constitutional rights.
K.S. Puttaswamy v. Union of India (2017) 10 SCC 1	9 Judges (2017)	Right to Privacy as a Fundamental Right under the Indian Constitution.	Unanimously held that Privacy is an intrinsic part of the Right to Life (Art. 21) and the freedoms under Part III. Privacy of thought, belief, and communication is the prerequisite for free expression under Article 19(1)(a).	*"Privacy is the ultimate guarantee of freedom of speech... An individual subjected to constant surveillance cannot exercise authentic freedom of thought or expression."*	Connects free speech with privacy, informational autonomy, and freedom from surveillance.
S.G. Vombatkere v. Union of India (2022) 7 SCC 633	3 Judges (2022)	Constitutional challenge to Section 124A IPC (Sedition); review of *Kedar Nath Singh* (1962).	Directed the Union and States to keep all pending trials, appeals, and proceedings under Section 124A in **abeyance**. No new FIRs to be registered under Section 124A while the provision is under government re-examination.	*"The rigours of Section 124A IPC are not in tune with the current social milieu and was intended for a colonial era... Liberty of citizens must be preserved."* (Ramana CJ)	Historic interim order suspending the operation of the colonial sedition law nationwide.

Kunal Kamra v. Union of India (2024) Bombay HC / SC	Div. Bench / 3rd Judge (2024)	Challenge to Rule 3(1)(b)(v) of amended IT Rules, 2021 empowering Central Government Fact-Check Unit (FCU) to flag "fake, false or misleading" news.	The Rule was struck down by the Bombay High Court (Majority/Third Judge). Empowering the State to be the sole arbiter of truth regarding its own affairs is unconstitutional, vague, and violates Article 19(1)(a). Supreme Court stayed FCU notification.	*"The State cannot possess a monopoly over truth... Bestowing the executive with uncanalised power to brand speech as fake or false creates an impermissible chill on free expression."*	Leading contemporary precedent striking down government fact-checking units as unconstitutional censorship.

PART 5: Master Examination Answer Blueprints

MASTER BLUEPRINT 1 (25 MARKS)

Questions Addressed:

- *May 2025 (2024–25), Q.2:* Analyse the scope of the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Indian Constitution. How has the Supreme Court defined its boundaries in the digital era? [25 Marks]
- *June 2024, Q.4 & 2015 (Set A), Q.6:* Throw light on the constitutional provisions of Fundamental Right to Freedom of Speech, Freedom of Press and the new challenges of scientific development. [25 Marks]
- *2016, Q.3:* Explain changing dimension of freedom of speech and expression, with the help of judicial pronouncements. [25 Marks]

1. Introduction & The Democratic Imperative

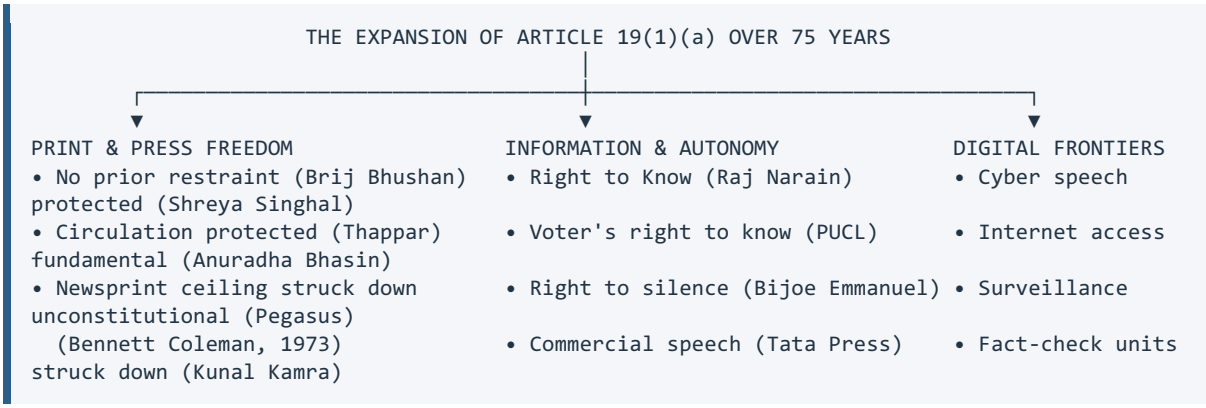
Freedom of speech and expression, guaranteed under **Article 19(1)(a)**, is the lifeblood of constitutional democracy. In a representative republic, the government is the servant of the people, not their master. For citizens to exercise their sovereign democratic franchise effectively, they must enjoy the uninhibited freedom to question, critique, debate, and expose the actions of public functionaries.

As Chief Justice Patanjali Sastri memorably declared in ***Romesh Thappar v. State of Madras* (1950)**, free political discussion is the foundation of all democratic institutions. Over the past seven decades, the Supreme Court has transformed Article 19(1)(a) through three monumental phases:

122. **The Print & Broadcast Era (1950–1995):** Establishing freedom of the press (*Bennett Coleman*), the right to know (*Raj Narain*), the right to remain silent (*Bijoe Emmanuel*), and public airwaves (*Cricket Association of Bengal*);

123. **The Digital Decriminalization Era (2015):** Striking down draconian cyber-censorship in ***Shreya Singhal v. Union of India***;

124. **The Digital Rights & Surveillance Era (2017–Present):** Recognising internet access as a constitutional medium (*Anuradha Bhasin*), shielding privacy from state surveillance (*Puttaswamy*, *Pegasus*), and dismantling government truth-arbiters (*Kunal Kamra*).



2. The Scope and Implicit Dimensions of Article 19(1)(a)

Unlike the First Amendment to the US Constitution, the Indian Constitution does not contain an express clause protecting "freedom of the press". However, Indian jurisprudence has firmly read freedom of the press and other vital liberties directly into Article 19(1)(a):

125. **Freedom of the Press:**

- In ***Romesh Thappar* (1950)** and* Brij Bhushan *(1950)**, the Court prohibited pre-censorship and affirmed that freedom of the press includes the unfettered right to circulate ideas without prior executive clearance.
- In ***Sakal Papers* (1962)** and* Bennett Coleman *(1973)**, the Court ruled that the State cannot use price-fixing, page-limits, or newsprint import quotas to indirectly choke the circulation or editorial independence of newspapers.

126. **The Right to Information (RTI):**

- In ***State of U.P. v. Raj Narain* (1975)**, Justice K.K. Mathew held: *"In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act."* This gave birth to the Right to Information Act, 2005.
- In ***Union of India v. Association for Democratic Reforms (ADR)* (2002)** and* PUCL *(2003)**, the Court held that the voter's right to know the assets, liabilities, and criminal antecedents of electoral candidates is a fundamental right under Article 19(1)(a).

127. **Right to Broadcast & Airwaves as Public Property:**

- In ***Secretary, Ministry of I&B v. Cricket Association of Bengal* (1995) 2 SCC 161**, the Court held that the electronic media and electromagnetic airwaves are public property. The State has no monopoly over broadcasting, and diversity of viewpoints must be preserved.

3. Boundaries of Free Speech in the Digital Era

As human communication migrated from physical paper to digital packets, the Supreme Court confronted state attempts to subject cyberspace to unchecked criminal and executive control:

128. **The Landmark Victory in *Shreya Singhal v. Union of India* (2015) 5 SCC 1:**

- Section 66A of the IT Act made sending "grossly offensive" or "annoying" messages online a cognizable offence punishable with 3 years' imprisonment. Police across India weaponized it to arrest citizens for posting political commentary, satirical cartoons, and Facebook statuses.
- Justice R.F. Nariman struck down Section 66A as unconstitutional on three grounds:
  - **Vagueness and Overbreadth:** Expressions like "annoying" or "inconvenient" have no clear legal meaning, giving unguided discretion to the police;
  - **The Chilling Effect:** Vague speech crimes force citizens to self-censor legitimate speech;
  - **Tripartite Distinction:** The Court distinguished between:
    129. *Discussion:* Pure exchange of ideas;
    130. *Advocacy:* Vehemently arguing for an unpopular cause;
    131. *Incitement:* Direct exhortation to imminent lawless action.

Discussion and advocacy, however provocative, cannot be curbed; **only incitement** that directly threatens public order falls within Article 19(2).

132. **Internet Access and Shutdowns in *Anuradha Bhasin v. Union of India* (2020) 3 SCC 637:**

- Following the constitutional changes in Jammu & Kashmir in August 2019, the entire region was subjected to a total, indefinite internet shutdown.
- The Supreme Court delivered a historic ruling:
  - Freedom of speech, expression, and the right to carry on trade and profession through the **medium of the internet is constitutionally protected** under Articles 19(1)(a) and 19(1)(g).
  - **Indefinite suspension of internet services is impermissible** under Indian law.
  - Any suspension order under the Telecom Suspension Rules, 2017 must satisfy the **Doctrine of Proportionality**, explore less restrictive alternatives, and be published openly for judicial review.

133. **The Fact-Check Unit and Monopoly over Truth (*Kunal Kamra*, 2024):**

- The Central Government amended the IT Rules, 2021 to empower a Government Fact-Check Unit (FCU) to flag any social media post regarding Central Government business as "fake, false, or misleading", compelling intermediaries to take it down or lose safe harbour protection.
- The Bombay High Court struck down the rule, holding that the Government cannot make itself the sole judge of truth in matters concerning its own performance. Giving the executive uncanalised power to censor criticism creates an impermissible chill on free speech.

4. Emerging Scientific & Technological Challenges

134. **Surveillance and Privacy (*Pegasus Case*, 2021):** Indiscriminate spyware surveillance against journalists, opposition politicians, and civil society destroys the confidentiality of journalistic sources and free thought. In ***Manohar Lal Sharma v. Union of India* (2021)**, the Supreme Court held that the State cannot evade judicial scrutiny by merely uttering the phrase "national security".

135. **Deepfakes, Synthetic Media & Algorithmic Manipulation:** Generative AI allows malicious actors to create non-consensual deepfake pornography, clone voices, and flood elections with

synthetic misinformation. Crafting balanced regulations that combat deepfakes without enabling blanket censorship of political satire is the foremost challenge of 2026.

136. **Big Tech Censorship & Horizontal Accountability:** As recognized in ***Kaushal Kishor v. State of U.P.* (2023)**, private social media intermediaries exercise monopoly control over digital public squares. Arbitrary "shadow-banning" or account terminations violate citizens' communicative rights.

5. Conclusion

From the colonial press censorship of 1950 to the algorithmic echo-chambers of 2026, the Supreme Court has consistently defended free speech as the bulwark of Indian liberty. The boundaries of Article 19(2) must remain strictly circumscribed, ensuring that neither state censorship nor corporate monopolization can silence the democratic discourse of the Republic.

MASTER BLUEPRINT 2 (10 / 12.5 MARKS)

Questions Addressed:

- *2022, Part B – Q.5:* Analyse emerging issues and challenges with respect to freedom of speech in the era of social media and internet censorship. [10 Marks]
- *2015 (Set B), Q.3(a):* Freedom of speech and Expression. [12.5 Marks]

1. Introduction: The Democratization and Vulnerability of Digital Speech

Social media platforms (X, YouTube, Meta, Instagram) have fundamentally democratized the public square. Any citizen with a smartphone now possesses a printing press and a global broadcasting station. However, this decentralized revolution has generated unprecedented constitutional friction between individual expression, state regulation, public order, and corporate governance.

2. Key Emerging Issues in Social Media Free Speech

137. **The Threat of Arbitrary Internet Blackouts:**
    - India has earned the global distinction of ordering the highest number of internet shutdowns annually, frequently invoked for minor law-and-order concerns, protests, or school examinations.
    - ***Anuradha Bhasin* (2020)** curbed this practice, declaring that access to the internet is a fundamental conduit for Articles 19(1)(a) and 19(1)(g) and subjecting all shutdown orders to the rigorous test of **Proportionality and least restrictive alternative**.

138. **Executive Overreach via Intermediary Rules:**
    - The **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021** have created major constitutional flashpoints:
        - *Traceability Mandate (Rule 4(2)):* Compelling end-to-end encrypted messaging platforms (e.g., WhatsApp) to identify the first originator of a message destroys mathematical end-to-end encryption, violating privacy (*Puttaswamy*) and speech.
        - *Grievance Appellate Committees (GAC):* Government-appointed committees empowered to overturn platform content moderation decisions risk creating an indirect state censorship board over social media.

139. **The Weaponization of Criminal Laws to Suppress Dissent:**

- The recurring misuse of cyber-crime provisions, anti-terror legislation (UAPA), and sedition (prior to its suspension in *S.G. Vombatkere*, 2022) against social media users, satirists, and cartoonists produces a profound **"chilling effect"**.
- As established in ***Shreya Singhal* (2015)** and* S. Rangarajan *(1989)**, mere advocacy of an unpopular opinion or sharp government critique cannot be equated with inciting public disorder.

140. **Platform Power and Algorithmic Bias:**

- Private platforms design algorithms to optimize user engagement, systematically amplifying sensationalism, communal polarization, and hate speech while suppressing organic reach.
- Following ***Kaushal Kishor v. State of U.P.* (2023)**, private intermediaries exercising public communicative functions must be subjected to public law standards of fairness and non-discrimination.

3. Conclusion

The regulation of social media cannot be left to either unguided executive discretion or profit-maximizing Silicon Valley algorithms. Preserving free speech in the digital age requires an independent statutory regulatory authority, strict compliance with the proportionality standard, and unwavering judicial vigilance against state censorship.

MASTER BLUEPRINT 3 (3 MARKS)

Question Addressed:

- *2022, Part A – Q.4:* What are reasonable restrictions under Article 19(2)? [3 Marks]

Model Answer:

Under **Article 19(2)** of the Constitution of India, the State is empowered to impose **"reasonable restrictions"** on the freedom of speech and expression guaranteed by Article 19(1)(a) on **eight exhaustive, closed grounds**:

141. Sovereignty and integrity of India;
142. Security of the State;
143. Friendly relations with foreign States;
144. Public order;
145. Decency or morality;
146. Contempt of court;
147. Defamation; and
148. Incitement to an offence.

To be constitutionally valid, the restriction must:

- Be authorized by a valid legislative enactment (not a mere executive order);
- Satisfy the **Doctrine of Proportionality**; and
- Possess a direct, proximate nexus with the danger sought to be prevented (*"spark in a powder keg"* test, *S. Rangarajan v. P. Jagjivan Ram*, 1989).

PART 6: Critical Commentary, Contemporary Controversies & Reform Commission Recommendations

1. The Colonial Relic of Sedition: From *Kedar Nath* to *Vombatkere*

Section 124A of the Indian Penal Code (now re-enacted with broader language in Section 152 of the Bharatiya Nyaya Sanhita, 2023) has historically been weaponized against journalists, activists, and citizens:

- In ***Kedar Nath Singh v. State of Bihar* (1962) Supp (2) SCR 769**, a 5-Judge Bench upheld Section 124A by reading it down to apply only where speech involves an intention or tendency to create disorder or incite violence.
- In practice, law enforcement agencies ignored the *Kedar Nath* limitation, arresting citizens for mere verbal dissent.
- In ***S.G. Vombatkere v. Union of India* (2022) 7 SCC 633**, the Supreme Court issued a historic interim order directing that Section 124A IPC be kept in total abeyance across India until the Union Government re-examines the law. The re-introduction of similar provisions under Section 152 BNS must satisfy strict constitutional scrutiny under Article 19(2).

2. The Weaponization of the "Heckler's Veto"

A recurring controversy in Indian free speech jurisprudence is the surrender of public authorities to religious, political, or fringe groups who threaten violence if a book, film, or play is released:

- In ***S. Rangarajan* (1989)*,*** Prakash Jha Productions v. Union of India *(2011), and* **Indibly Creative Pvt. Ltd. v. Govt. of West Bengal* (2020)** (Bhobishyoter Bhoot film ban), the Supreme Court firmly ruled that the State has a positive constitutional duty to protect the speaker and maintain order, rather than capitulating to mob threats by banning the artistic work.

3. Major Reform Commission Recommendations on Free Speech

REFORM PROPOSALS ON FREE SPEECH		
Commission / Committee	Key Recommendations	Status / Legislative Act
Law Commission of India (267th Report on Hate Speech)	• Criminal Defamation under Sec. 499/500 IPC must be decriminalized; civil only	Re-enacted in Bharatiya Nyaya Sanhita (BNS 2023) with community service
Justice B.N. Srikrishna Committee on Data Protection (2018)	• Data privacy law to prevent state surveillance chills • Free speech exceptions	Digital Personal Data Protection Act (DPDPA), enacted in 2023
Parliamentary Standing Committee on Communications & Information Tech (2021)	• Reform Telecom Suspension Rules; end blanket internet shutdowns during exams	Stricter oversight rules recommended; awaiting statutory amendments

149. **Law Commission 267th Report (Hate Speech):**
    - Recommended inserting distinct provisions (Sections 153C and 505A) into criminal law to clearly define and penalize hate speech based on identity without chilling legitimate political dissent, robust satire, and academic critique.
150. **Standing Committee on Communications & IT (2021):**

- Strongly condemned the rampant use of internet shutdowns across Indian states for trivial administrative matters like preventing cheating in competitive exams.
- Recommended establishing mandatory independent review committees and creating a centralized national database of all internet suspension orders to guarantee transparency and parliamentary accountability.

151. **Conclusion:** Freedom of speech and expression is the guardian of every other fundamental right. As India navigates the complex challenges of the 21st-century digital landscape, its constitutional courts must remain steadfast in ensuring that national security, state pride, and moral majoritarianism do not extinguish the vibrant, heterodox voice of the sovereign citizen.

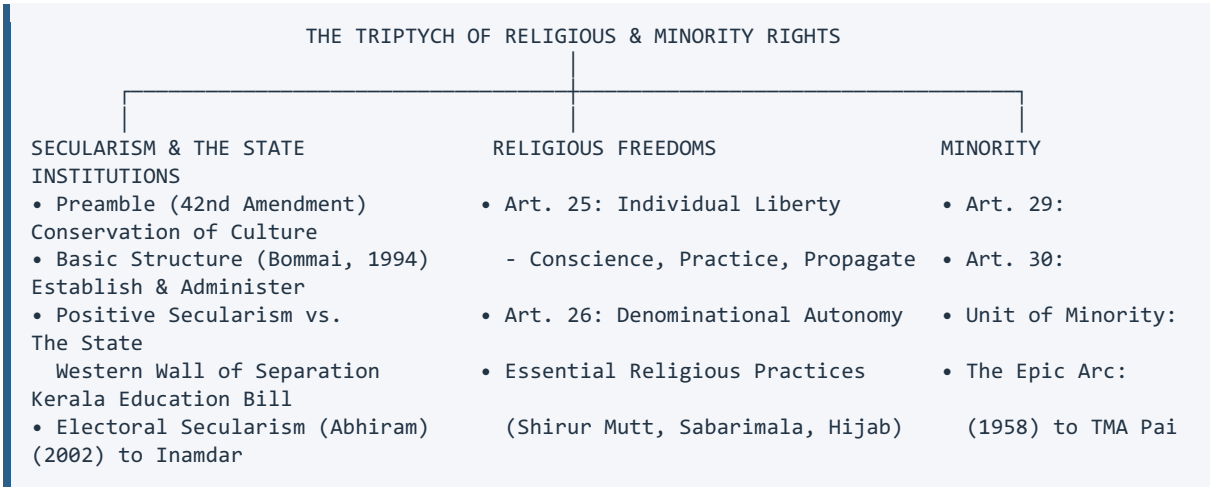
Paper 2: Indian Constitutional Law – The New Challenges

Master Study Material: Theme 5

THEME 5: Secularism, Religious Freedom & Minority Educational Rights (Articles 25–30)

PART 1: Exhaustive Syllabus & Thematic Scope

The constitutional design of Secularism, Religious Liberty, and Minority Rights constitutes the ultimate test of the Indian Republic's pluralistic soul. Framed in the catastrophic aftermath of the 1947 Partition, the Indian Constitution deliberately rejected both theocracy and Western militant anti-clericalism, forging a distinctive model of **Positive Secularism** (*Sarva Dharma Sambhava* and "Principled Distance").



Detailed Syllabus Breakdown:

152. **The Concept and Typology of Indian Secularism:**

- The Western model: Strict "Wall of Separation" between Church and State (Jeffersonian model; French *laïcité*).
- The Indian model: Equal respect for all religions (*Sarva Dharma Sambhava*), equal tolerance, and "principled distance" (Rajeev Bhargava).
- Textual and Historical Evolution: The 42nd Constitutional Amendment Act, 1976 (formal insertion into the Preamble); the Constituent Assembly Debates (Dr. Ambedkar, K.T. Shah, H.V. Kamath).
- Secularism as an immutable **Basic Feature** of the Constitution: *S.R. Bommai v. Union of India* (1994).
- Non-negotiable secularism in politics: *Abhiram Singh v. C.D. Commachen* (2017) (appeal to religion, race, caste, or language in elections is a corrupt practice under Section 123(3) of the Representation of the People Act, 1951).

153. **Individual and Collective Religious Freedom (Articles 25–28):**

- Article 25: Freedom of conscience, and the right freely to profess, practise, and propagate religion.
- The meaning of "Propagate": Does it include the right to convert? *Rev. Stanislaus v. State of M.P.* (1977) (right to transmit or spread one's religion, but no fundamental right to forcibly convert another person).
- The Triple Limitations of Article 25(1): **Public Order, Morality, and Health**, and subject to the other provisions of Part III.
- Social Reform & Secular Regulation: Article 25(2)(a) (regulating secular economic, financial, or political activities associated with religious practice) and Article 25(2)(b) (social welfare, reform, and throwing open Hindu religious institutions of a public character to all classes and sections).
- Freedom to manage religious affairs (Article 26): Rights of religious denominations to establish institutions, manage internal religious affairs, and own property (*Bramchari Sidheswar Shai v. State of West Bengal*, 1995).

154. **The Essential Religious Practices (ERP) Doctrine:**

- Genesis: *Commr., Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt* (1954) (what constitutes an essential part of a religion is determined with reference to the doctrines of that religion itself).
- Rationalization & Judicial Secularization: *Durgah Committee, Ajmer v. Syed Hussain Ali* (1961) (excluding secular superstitions and unessential accretions).
- Recent Flashpoints:
  - Triple Talaq: *Shayara Bano v. Union of India* (2017) (Talaq-e-Biddat is not an essential religious practice in Islam).
  - Sabarimala Entry: *Indian Young Lawyers Association v. State of Kerala* (2018) (exclusion of women aged 10–50 held unconstitutional; religious autonomy subordinated to constitutional morality and gender equality).
  - The Pending 9-Judge Reference: *Kantaru Rajeevaru v. Indian Young Lawyers Association* (2020) (framing overarching constitutional questions regarding judicial review of religious practices).
  - The Hijab Controversy: *Resham v. State of Karnataka* / Supreme Court split verdict in *Aishat Shifa v. State of Karnataka* (2022).

155. **Cultural and Educational Rights of Minorities (Articles 29 & 30):**

- Scope of Article 29: Conservation of distinct language, script, or culture (Art. 29(1) applies to *any section of citizens*, majority or minority); non-discrimination in state-aided educational institutions (Art. 29(2)).
- Scope of Article 30: Absolute right of **religious and linguistic minorities** to establish and administer educational institutions of their choice.
- Unit for Determining Minority: The **State** is the geographic and demographic unit, not the nation as a whole (*In Re Kerala Education Bill*, 1958; reaffirmed in *T.M.A. Pai Foundation*, 2002).
- The Great Doctrinal Arc of Minority Rights:
  - *In Re Kerala Education Bill* (1958): State cannot destroy minority character in the name of regulation;

- *St. Xavier's College v. State of Gujarat* (1974): Autonomy in administration is essential for minority character;
- *T.M.A. Pai Foundation v. State of Karnataka* (2002 - 11 Judges): Comprehensive charter of educational rights; unaided minority institutions have maximum autonomy in admissions and fee structure;
- *Islamic Academy of Education* (2003) & *P.A. Inamdar v. State of Maharashtra* (2005 - 7 Judges): State cannot impose seat quotas or reservations on unaided private minority colleges;
- *Pramati Educational Trust v. Union of India* (2014 - 5 Judges): Exemption of minority schools (aided and unaided) from the Right to Education Act under Article 30(1).

PART 2: Complete PYQ Question Bank (2015 – 2026)

> ⚠️ ***Note on Speculative Model Question:*** *The 2025–26 (Feb 2026) entry included below represents a forward-looking* ***speculative / model examination question*** *formulated on anticipated syllabus updates, rather than an archived historical sitting.*

All ten examination questions mapped to Theme 5 are reproduced below verbatim with their year, question number, and marks:

Year & Session	Question Identifier	Verbatim Examination Question Text	Prescribed Marks
Feb 2026 (2025–26) [Speculative / Model Projection]	Q.5	Discuss the scope of the right to freedom of religion under the Indian Constitution. How has the judiciary maintained the balance between religious freedom and public order/social reform?	**25 Marks**
May 2025 (2024–25)	Q.6	"The State can have no religion of its own but it treats all religions equally." Critically examine this statement in light of the Indian Constitutional framework. How has the judiciary interpreted and upheld this principle of secularism?	**25 Marks**
2023	Q.3	Under Article 29 and 30 of the Indian Constitution the cultural and educational rights of	**25 Marks**

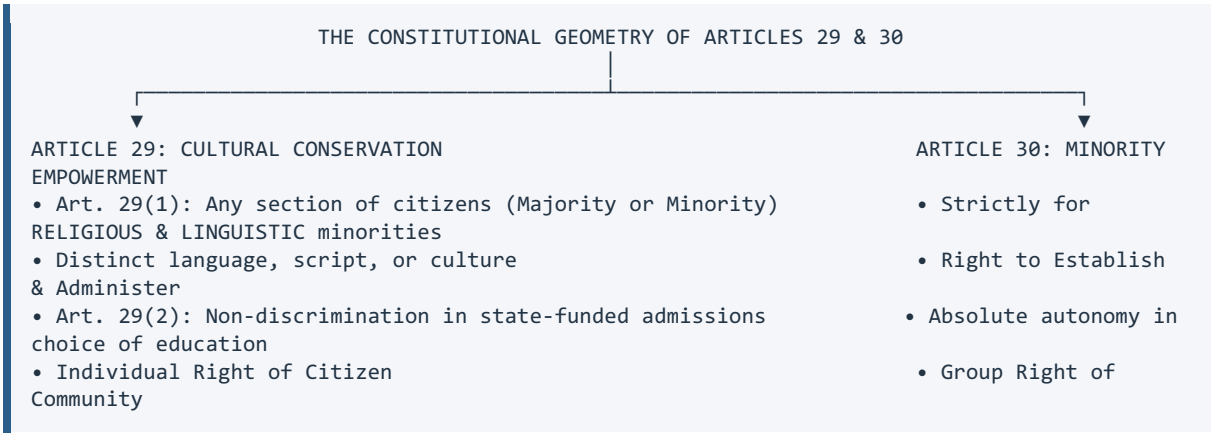
		the minorities are guaranteed. Discuss with leading case laws.	
2022	Part B – Q.6	Discuss the developments of rights of minorities from Re Kerala Education Bill to TMA Pai Foundation.	**10 Marks**
2019	Q.1	Discuss the rights of minorities to establish and administer educational institutions. Cite leading case laws.	**25 Marks**
2016	Q.5	Discuss the rights of minorities to establish and administer educational institutions. Cite leading case laws.	**25 Marks**
2016	Q.7(c)	Secularism.	**12.5 Marks**
2015 (Set A)	Q.7	Examine critically Articles 29 and 30 of the Constitution of India.	**25 Marks**
2015 (Set B)	Q.1	Explain the "Principle of Secularism", Freedom of Religion and Religious Fundamentalism which is rampant in our country.	**25 Marks**
2015 (Set B)	Q.4	Examine critically Articles 29 and 30 of the Constitution of India with the help of cases.	**25 Marks**

PART 3: Foundational Legal Framework & Constitutional Anatomy

1. The Secular Constitutional Matrix: Preamble, Articles 25 to 28

- **The Preamble:** The words *"Secular Socialist"* were formally inserted by the 42nd Constitutional Amendment Act, 1976. However, as held in *S.R. Bommai* (1994), secularism was an organic, foundational feature of the Constitution from its inception in 1950.
- **Article 25(1) (Individual Freedom):**
  - Guarantees: (a) Freedom of conscience; (b) Right freely to profess; (c) Right to practise; (d) Right to propagate.
  - Subjection: Subject to **public order, morality, and health**, and to the other provisions of Part III (Articles 14, 15, 19, 21).

- **Article 25(2) (State Reform Powers):**
  - Saving the power of the State to make laws:
    - (a) Regulating or restricting any economic, financial, political or other secular activity associated with religious practice;
    - (b) Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.
- **Article 26 (Denominational Autonomy):**
  - Rights of every religious denomination or section thereof:
    - (a) Establish and maintain institutions for religious and charitable purposes;
    - (b) Manage its own affairs in matters of religion;
    - (c) Own and acquire movable and immovable property;
    - (d) Administer such property in accordance with law.
  - Noticeable contrast: Article 26 is subject **only to public order, morality, and health**, and notably omits the phrase "subject to other provisions of Part III" (a tension central to the Sabarimala dispute).
- **Article 27 (Freedom from Taxation for Religion):**
  - No person shall be compelled to pay taxes the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion.
- **Article 28 (Freedom from Religious Instruction):**
  - Completely barred in institutions wholly maintained out of State funds (Art. 28(1)).
  - Permitted in institutions administered by State but established under an endowment/trust requiring religious instruction (Art. 28(2)).
  - Voluntary participation in recognized or state-aided institutions (Art. 28(3)).



2. Minority Rights: Articles 29 and 30

- **Article 29(1):** Protects the right of *"any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own"* to conserve the same. It is a wide right available to **any group**, whether majority or minority.
- **Article 29(2):** Protects individual citizens against exclusion: *"No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."*

- **Article 30(1):** *"All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice."*
  - Applies exclusively to **linguistic and religious minorities**;
  - Protects institutions of their "choice" (they can be general secular institutions, medical colleges, engineering colleges, or religious seminaries);
  - Article 30(2) forbids the State from discriminating in granting aid to educational institutions on the ground that it is under minority management.

PART 4: Landmark & Contemporary Case Law Matrix

Case Name & Citation	Bench Strength & Year	Core Constitutional Issue	Ratio Decidendi & Legal Principles	Verbatim / Key Observation	Application in Exams
Commr., HRE, Madras v. Sri Lakshmindra Thirtha (Shirur Mutt) AIR 1954 SC 282	7 Judges (1954)	State control over administration of a Hindu Mutt; definition of religion under Arts. 25 & 26.	Formulated the **Essential Religious Practices (ERP) Test**: Religion includes rituals, observances, and ceremonies essential to that faith, determined by the tenets of the religion itself.	*"What constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself."* (Mukherjea J.)	Locus classicus establishing the ERP test and distinguishing religion from secular management.
In Re Kerala Education Bill, 1957 AIR 1958 SC 956	7 Judges (1958)	State control over minority school teachers' appointments and conditions under Articles 29 & 30.	1. Unit for determining minority is the **State**, not India as a whole. 2. Right to administer is **not a right to maladminister**. Reasonable regulatory standards for educational excellence are valid, but cannot destroy minority autonomy.	*"A minority community can effectively conserve its language, script or culture by and through educational institutions of its choice... The State cannot annihilate the right under guise of regulation."*	Landmark starting point of minority educational jurisprudence.
Rev. Stanislaus v. State of M.P.	5 Judges (1977)	Constitutional validity of State	Article 25(1) guarantees the	*"What the Article grants is*	Foundational authority on

(1977) 1 SCC 677		anti-conversion laws; whether "propagate" includes right to convert.	right to transmit or spread one's religion by an exposition of its tenets, but **does not include the right to convert** another person. Forcible or fraudulent conversion disturbs "public order".	*not the right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets."* (Ray CJ)	anti-conversion statutes and the scope of "propagation".
S.R. Bommai v. Union of India (1994) 3 SCC 1	9 Judges (1994)	Dismissal of BJP-led State governments post-Babri Masjid demolition; whether Secularism is Basic Structure.	1. **Secularism is part of the Basic Structure** of the Constitution. 2. State cannot identify with or promote any religion. 3. Any political party pursuing an unsecular agenda acts against the Constitution, justifying Article 356 intervention.	*"Secularism is more than a passive attitude of religious tolerance; it is a positive concept of equal treatment of all religions... Religion cannot be mixed with politics."* (Jeevan Reddy J.)	Supreme authority on Secularism as a Basic Feature and the separation of religion from politics.
T.M.A. Pai Foundation v. State of Karnataka (2002) 8 SCC 481	11 Judges (2002)	Comprehensive scope of minority rights under Article 30(1) vs. State regulatory powers.	1. Minorities must be determined **State-wise**. 2. Unaided private institutions (minority and non-minority) have total autonomy in fee structure and admissions (subject to merit and no capitation fees).	*"The right to establish and administer educational institutions is guaranteed to all citizens under Art. 19(1)(g) and to minorities under Art. 30... Regulation must be for ensuring excellence, not destroying autonomy."*	The definitive 11-Judge Bench magnum opus governing minority educational institutions.

			3. State cannot impose seat quotas on unaided colleges.		
P.A. Inamdar v. State of Maharashtra (2005) 6 SCC 537	7 Judges (2005)	State-enforced reservation quotas in unaided private minority and non-minority educational institutions.	Clarified *TMA Pai*: The State cannot enforce its reservation policy on private unaided educational institutions (minority or non-minority). Doing so destroys their institutional autonomy.	*"Neither the policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out in private unaided educational institutions."* (Lahoti CJ)	Key ruling affirming that private unaided minority colleges are immune from state quotas.
Pramati Educational Trust v. Union of India (2014) 8 SCC 1	5 Judges (2014)	Validity of Section 12(1)(c) of Right to Education (RTE) Act requiring 25% free seats for disadvantaged children in minority schools.	RTE Act is constitutionally valid for non-minority schools, but **cannot apply to aided or unaided minority schools**, as it abrogates their minority character under Article 30(1).	*"If the 2009 Act is made applicable to minority schools, aided or unaided, the minority character of the school is destroyed. It is ultra vires Article 30(1)."* (Patnaik J.)	Shielded minority schools completely from RTE Act 25% reservation mandates.
Shayara Bano v. Union of India (2017) 9 SCC 1	5 Judges (2017)	Validity of Instantaneous Triple Talaq (Talaq-e-Biddat); whether protected as essential religious practice.	Triple Talaq is not an Essential Religious Practice in Islam. Practices that violate gender equality (Art. 14) and human dignity (Art. 21) cannot claim protection under Article 25.	*"Talaq-e-biddat is manifest arbitrariness... What is held to be bad in theology cannot be good in law."* (Kurian Joseph J. / Nariman J.)	Breakthrough subordinating non-essential religious practices to gender equality and human rights.
Indian Young Lawyers Assn.	5 Judges (2018)	Custom banning entry	In a 4:1 majority, the	*"Patriarchy in religion cannot*	Landmark judgment

v. State of Kerala (Sabarimala) (2019) 11 SCC 1		of biological women aged 10–50 into Lord Ayyappa Temple; Arts. 25 & 26 vs. Arts. 14, 15, 21.	exclusion was struck down. Custom was not an Essential Religious Practice. Devotees of Lord Ayyappa do not constitute a separate denomination. Article 25 is subject to gender equality and constitutional morality.	*be permitted to trump the basic constitutional values of equality and dignity. Women have equal right to worship."* (Misra CJ / Chandrachud J.)	placing Constitutional Morality over exclusionary religious practices.
Aishat Shifa v. State of Karnataka (Hijab Case) (2023) 2 SCC 1	2 Judges (2022)	Ban on wearing Hijab inside government pre-university classrooms; split verdict in Supreme Court.	**Split Verdict (Referred to CJI for larger bench):** - *Hemant Gupta J:* Upheld ban; discipline and uniformity in secular schools prevail over individual religious expression. - *Sudhanshu Dhulia J:* Quashed ban; wearing hijab is a matter of personal choice, privacy, and right to education under Arts. 19(1)(a), 21, and 25.	*"It is ultimately a matter of choice... By asking girls to take off their hijab at the school gate, we are denying them education."* (Dhulia J.)	Leading contemporary unresolved constitutional dispute regarding religious attire in public spaces.

PART 5: Master Examination Answer Blueprints

MASTER BLUEPRINT 1 (25 MARKS)

Questions Addressed:

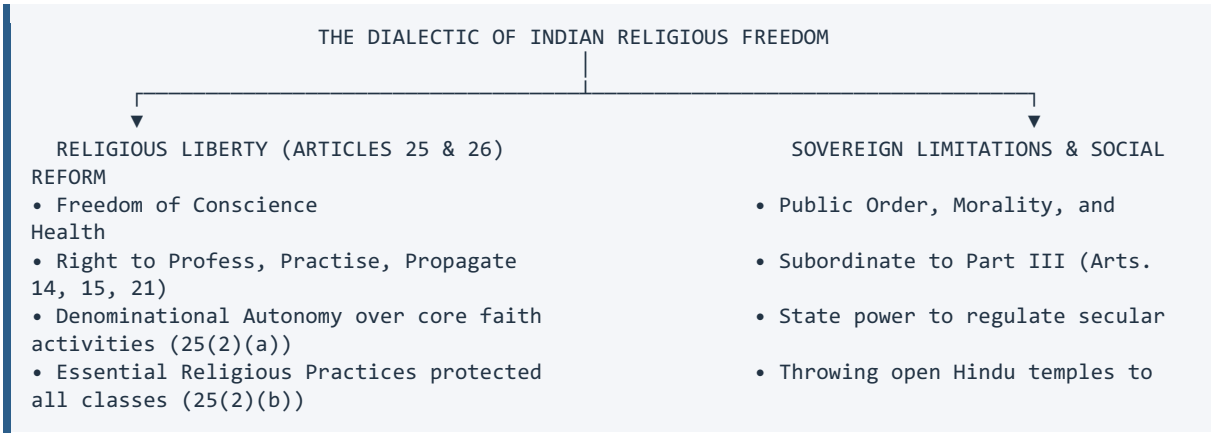
- *Feb 2026 (2025–26) [Speculative / Model Projection], Q.5:* Discuss the scope of the right to freedom of religion under the Indian Constitution. How has the judiciary maintained the balance between religious freedom and public order/social reform? [25 Marks]
- *May 2025 (2024–25), Q.6:* "The State can have no religion of its own but it treats all religions equally." Critically examine this statement in light of the Indian Constitutional framework. How has the judiciary interpreted and upheld this principle of secularism? [25 Marks]
- *2015 (Set B), Q.1:* Explain the "Principle of Secularism", Freedom of Religion and Religious Fundamentalism which is rampant in our country. [25 Marks]

1. Introduction: The Unique Architecture of Indian Secularism

Secularism under the Indian Constitution is not an anti-religious ideology, nor is it an imported replica of the American or French doctrine of a strict, unbridgeable "Wall of Separation" between Church and State. In a deeply spiritual, multi-faith society, the Framers adopted a model of **Positive Secularism**, historically rooted in the ancient ethos of ***Sarva Dharma Sambhava*** (equal respect for all faiths) and modern constitutional **"Principled Distance"**.

As affirmed by the 9-Judge Constitution Bench in ***S.R. Bommai v. Union of India* (1994) 3 SCC 1**, Secularism is an unalterable **Basic Feature** of the Constitution. The Indian Republic:

156. Has no official state religion;
157. Does not discriminate against or favor any citizen on grounds of faith (Articles 15 & 16);
158. Guarantees universal freedom of conscience and worship (Articles 25–28); and
159. Retains an active sovereign mandate to intervene in religious affairs to eradicate social evils and enforce human dignity (Article 25(2)).



2. The Scope of Religious Freedom: Articles 25 and 26

160. **Article 25 (Individual Liberty):**
    - *Freedom of Conscience:* The absolute inner, mental freedom of a human being to establish whatever relationship they desire with God, the divine, or the universe (including atheism and agnosticism).
    - *Right to Profess:* The open, public declaration of one's religious allegiance.
    - *Right to Practise:* The performance of religious rites, ceremonies, and rituals.

- *Right to Propagate:* In ***Rev. Stanislaus v. State of M.P.* (1977)**, the Supreme Court held that the right to propagate means communicating one's faith to enlighten others, but it **does not confer a fundamental right to convert another person** through coercion, fraud, or allurement.

161. **Article 26 (Denominational Autonomy):**

- Protects religious sects or denominations (e.g., Ramakrishna Mission, Shirur Mutt) to establish institutions, own property, and administer their internal matters of religion without state meddling.

3. How the Judiciary Balances Religious Freedom and Social Reform: The ERP Test

The most profound constitutional challenge in Indian legal history has been determining where pure religion ends and secular regulation begins. To resolve this friction, the Supreme Court developed the **Essential Religious Practices (ERP) Doctrine**:

- **Origin in *Shirur Mutt* (1954):** The 7-Judge Bench ruled that the State cannot interfere with the core doctrines of a faith. What constitutes an essential practice must be determined by the internal tenets of the religion itself.
- **Pruning Secular Accretions in *Durgah Committee* (1961):** The Court warned that superstitious practices, commercial exploitation, and historical accretions cannot claim constitutional immunity under Article 25.
- **The Modern Constitutional Morality Standard:**

  162. *Eradication of Social Evils:* In ***Shayara Bano* (2017)**, the Court invalidated Instantaneous Triple Talaq, holding that a patriarchal practice that arbitrarily destroys a woman's marriage without reconciliation violates Article 14 and cannot be protected as an essential Islamic practice.

  163. *Gender Justice in Sacred Spaces:* In ***Indian Young Lawyers Association (Sabarimala Case)* (2018)**, the Court struck down the centuries-old custom barring women aged 10–50 from entering the Sabarimala temple. The majority held that exclusionary taboos rooted in biological notions of menstruation violate Article 15(1) and human dignity (Article 21). Constitutional morality must triumph over discriminatory religious traditions.

4. Constitutional Checks against Religious Fundamentalism & Electoral Exploitation

In ***Abhiram Singh v. C.D. Commachen* (2017) 2 SCC 629**, a 7-Judge Constitution Bench established an impenetrable wall between religion and electoral politics:

- The Court interpreted Section 123(3) of the Representation of the People Act, 1951, ruling that **any appeal to the religion, caste, community, or language of either the candidate, their rival, or the voters constitutes a corrupt electoral practice**, rendering the election void.
- The Court held that democracy and secularism are inextricably linked: the State must remain neutral, and the electoral process must remain completely secularized.

5. Conclusion

Indian secularism is neither godless nor theocratic; it is a heroic constitutional compromise designed to preserve harmony across a vast kaleidoscope of faiths. The judiciary has successfully maintained the delicate equilibrium by protecting genuine religious faith while fearlessly striking down practices that violate human dignity, gender justice, and social reform.

MASTER BLUEPRINT 2 (25 MARKS)

Questions Addressed:

- *2023, Q.3 & 2019, Q.1 & 2016, Q.5:* Under Article 29 and 30 of the Indian Constitution the cultural and educational rights of the minorities are guaranteed. Discuss with leading case laws / rights of minorities to establish and administer educational institutions. [25 Marks]
- *2022, Part B – Q.6:* Discuss the developments of rights of minorities from Re Kerala Education Bill to TMA Pai Foundation. [10 Marks]
- *2015 (Set A), Q.7 & 2015 (Set B), Q.4:* Examine critically Articles 29 and 30 of the Constitution of India with the help of cases. [25 Marks]

1. Introduction: The Minority Magna Carta

The inclusion of **Articles 29 and 30** in Part III represents one of the most generous and visionary acts of statesmanship by the Constituent Assembly. In the shadow of Partition, minority communities in India voluntarily surrendered demands for separate electorates and political reservations in exchange for an inviolable constitutional guarantee: **the sacred right to preserve their distinct language, script, and culture, and the absolute freedom to establish and administer educational institutions of their choice.**

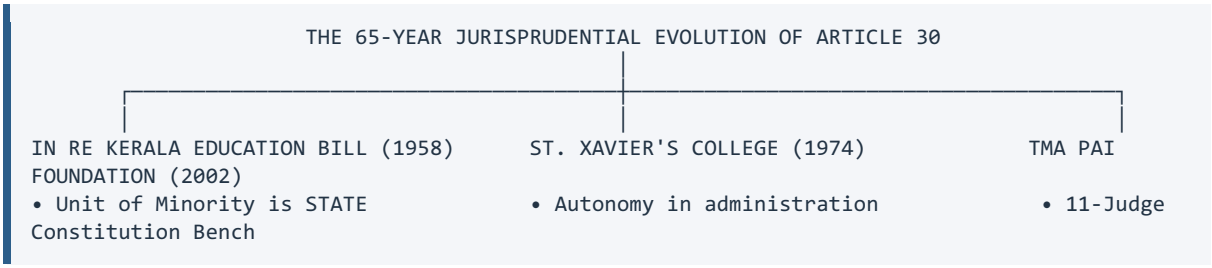
As observed by the Supreme Court in ***St. Xavier's College v. State of Gujarat* (1974)**, Article 30 is not a charter of privilege or special discrimination; it is an egalitarian charter designed to infuse a sense of security and confidence in the minorities, ensuring they can stand on an equal footing with the majority.

2. Textual Deconstruction: Article 29 vs. Article 30

Parameter	Article 29 (Conservation & Access)	Article 30 (Minority Institutions)
Beneficiaries	Art. 29(1): *"Any section of citizens"* (Applies to **both Majority and Minority** groups).	Exclusively available to **Religious and Linguistic Minorities**.
Core Right	Right to conserve distinct language, script, or culture (29(1)); non-discrimination in admission (29(2)).	Right to **establish and administer** educational institutions of their choice (30(1)).
Nature of Institution	Educational institutions receiving state aid or maintained by State.	Any educational institution, aided or unaided, professional or general.

3. The Doctrinal Evolution: From *Kerala Education Bill* to *T.M.A. Pai*

The jurisprudence governing Article 30 has evolved through four monumental constitutional epochs:



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• Right to administer is NOT wise determination
  right to maladminister in admissions & fees
• Regulatory excellence valid nationalizing quotas
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is core of Art. 30
• State cannot dictate staff selection or governing bodies
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• State-
• Autonomy
• Ban on
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164. ***In Re Kerala Education Bill, 1957* (AIR 1958 SC 956) - 7 Judges:**

- *Unit of Minority:* Formulated the rule that whether a community is a minority must be determined **with reference to the territory of the legislating State**, not India as a whole.
- *Regulation vs. Annihilation:* Chief Justice S.R. Das laid down the immortal principle: **"The right to administer is not a right to maladminister."** The State may prescribe regulations to ensure academic excellence, teacher qualifications, sanitation, and library standards. However, the State cannot destroy the minority management's administrative autonomy under the guise of regulation.

165. ***St. Xavier's College v. State of Gujarat* (1974) 1 SCC 717 - 9 Judges:**

- The Court struck down provisions of the Gujarat University Act that sought to affiliate the college, control appointments, and reconstitute the governing council with government nominees.
- The 9-Judge Bench held that the right to administer includes: (a) Choosing the governing body; (b) Appointing teaching and non-teaching staff; (c) Admitting students of their choice; and (d) Using properties for the institutional good.

166. ***T.M.A. Pai Foundation v. State of Karnataka* (2002) 8 SCC 481 - 11 Judges:**

- An unprecedented 11-Judge Constitution Bench answered 11 comprehensive questions:
  - **Unit of Determination:** Firmly settled that minorities (both religious and linguistic) must be determined **State-wise**, taking the population of the State as the unit.
  - **Unaided Minority Institutions:** Enjoy maximum autonomy. The State cannot enforce government reservation quotas or capitation-fee schemes upon them, provided admissions are transparent, fair, and non-exploitative.
  - **Aided Minority Institutions:** The State can impose reasonable conditions regarding academic standards, but must preserve a reasonable percentage of seats for the minority community that founded the institution.

167. ***P.A. Inamdar v. State of Maharashtra* (2005) 6 SCC 537 - 7 Judges:**

- The Court clarified that the State **cannot appropriate seats or enforce state quotas** in private unaided minority or non-minority educational institutions. Merit-based entrance tests and transparency are mandatory, but institutional autonomy is paramount.

168. ***Pramati Educational Trust v. Union of India* (2014) 8 SCC 1 - 5 Judges:**

- A 5-Judge Bench held that the 25% mandatory quota for disadvantaged children under Section 12(1)(c) of the **Right to Education (RTE) Act, 2009 cannot apply to minority schools (aided or unaided)**, because enforcing such quotas would abrogate the minority character protected under Article 30(1).

4. Critical Commentary and Contemporary Dilemmas

- **National Minority vs. State Majority:** In states like Jammu & Kashmir, Punjab, Nagaland, and Mizoram, religious groups that are national minorities (Muslims, Sikhs, Christians) constitute the numerical majority within the State. Applying the State-wise test (*TMA Pai*) means they cannot claim minority status within those States.
- **Commercialization of Minority Status:** In recent years, private commercial operators have sought minority status purely to bypass reservation quotas, fee regulatory committees, and the RTE Act. As held in ***St. Stephen's College v. University of Delhi* (2022)**, minority institutions must balance institutional character with universal merit.

5. Conclusion

Articles 29 and 30 represent the crowning glory of Indian constitutional tolerance. By insulating cultural identity and education from the shifting tides of majoritarian politics, the Constitution guarantees that India's civilizational diversity remains vibrant, secure, and indomitable.

PART 6: Critical Commentary, Contemporary Controversies & Reform Commission Recommendations

1. The Sabarimala Review & The 9-Judge Reference

Following the 2018 Sabarimala verdict, a review petition resulted in the unprecedented referral in ***Kantaru Rajeevaru v. Indian Young Lawyers Association* (2020) 2 SCC 1**:

- A 9-Judge Constitution Bench was constituted to settle the structural collision between:
  169. Denominational autonomy under Article 26;
  170. Individual religious freedom under Article 25;
  171. The right to equality and non-discrimination under Articles 14 and 15;
  172. The judicial legitimacy of the Essential Religious Practices (ERP) doctrine itself.
- Scholars argue that the judiciary has acted as a "cleric in robes" by determining what is essential to a faith, advocating instead a shift toward a pure **"Constitutional Morality and Anti-Exclusion"** framework.

2. The Uniform Civil Code (Article 44) Debate

The ongoing discourse surrounding the enactment of a Uniform Civil Code (UCC) highlights the unresolved tension between religious personal laws and gender equality:

- Reformers argue that UCC is essential to fulfill Article 44 and eliminate gender discrimination in marriage, succession, and guardianship across all religions (*Shah Bano*, 1985; *Sarla Mudgal*, 1995; *Shayara Bano*, 2017).
- Minority communities express anxiety that a top-down UCC could erase their distinctive religious identity, arguing that internal reform within personal laws is preferable to legislative imposition.

3. Major Reform Commission Recommendations on Secularism & Minority Rights

REFORM PROPOSALS ON SECULARISM & MINORITIES		
Commission / Report	Key Recommendations	Status / Impact

Law Commission of India Consultation Paper (2018)	• UCC "neither necessary nor desirable at this stage" • Reform personal laws within	Sparked national debate; recommended codification of family law rights
Sachar Committee Report (2006)	• Create Equal Opportunity Commission • Targeted educational access	Institutionalized aid schemes; EOC awaiting statutory enactment
Justice Ranganath Misra Commission (2007)	• Extend SC reservation to Dalit Christians & Muslims • 15% minority quota in jobs	Pending consideration before Supreme Court Constitution Bench

173. **Law Commission of India (2018 Consultation Paper on Reform of Family Law):**

- Observed that a unified nation does not require uniform laws; diversity of personal laws can be preserved provided discriminatory practices within each personal law are reformed to guarantee gender equality.

174. **Sachar Committee Report (2006):**

- Recommended robust state intervention to address the severe educational and socioeconomic backwardness of Indian Muslims, emphasizing targeted institutional support, scholarships, and representation in public infrastructure.

175. **Conclusion:** Secularism and minority protection in India are not historical accidents; they are the bedrock upon which the unity and integrity of the Republic rest. Constitutional courts must continue to defend this sacred compact against communal polarization and authoritarian majoritarianism.

Paper 2: Indian Constitutional Law – The New Challenges

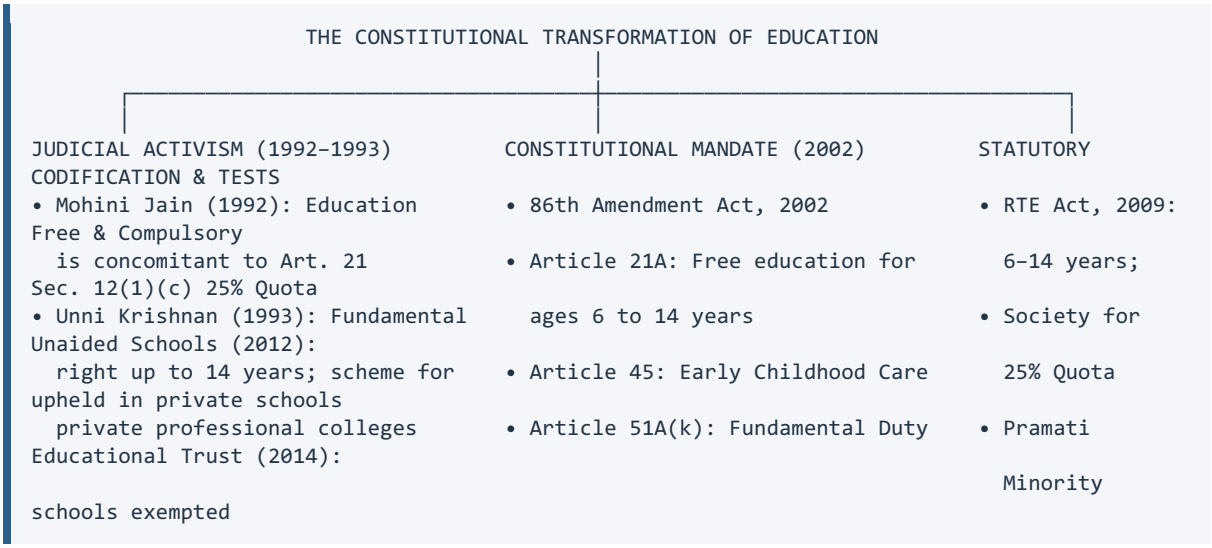
Master Study Material: Theme 6

THEME 6: Right to Education & Commercialization of Education (Article 21A)

PART 1: Exhaustive Syllabus & Thematic Scope

The constitutional journey of the Right to Education (RTE) in India is one of the most inspiring sagas of judicial creativity culminating in constitutional amendment. Moving from a non-justiciable aspiration in Part IV (Article 45) to an enforceable Fundamental Right under **Article 21A**, education is now recognized as the indispensable gateway to human dignity, equality of opportunity, and the meaningful exercise of all other civil liberties.

However, alongside the expansion of the public right to primary schooling, Indian higher and secondary education has experienced rampant **commercialization, profiteering, and privatization**. The constitutional challenge of the 21st century is balancing the right of children to equitable, quality education against the rise of predatory coaching mafias, exorbitant capitation fees, and the widening digital divide.



Detailed Syllabus Breakdown:

176. **The Jurisprudential Genesis: From Directive Principle to Fundamental Right:**

- The original constitutional framework: Article 45 of Directive Principles of State Policy (DPSP)—the state's commitment to provide free and compulsory education for all children until age 14 within 10 years of the Constitution's commencement.
- The failure of executive and legislative will (1950–1990) and persistent mass illiteracy.
- Judicial Creation of the Right to Education:
  - *Mohini Jain v. State of Karnataka* (1992) (The Capitation Fee Case): Right to education is concomitant to the fundamental rights enshrined in Part III; right to life under Article 21

cannot be lived with dignity without education; charging capitation fees violates Article 14.

- *Unni Krishnan, J.P. v. State of Andhra Pradesh* (1993) (5-Judge Constitution Bench): Re-calibrating *Mohini Jain*; every child has a fundamental right to free education up to the age of 14 years; thereafter, the right is circumscribed by the economic capacity and development of the State. Formulated the historic scheme to regulate private professional college admissions and fees.

177. **The 86th Constitutional Amendment Act, 2002:**

- Insertion of **Article 21A**: *"The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."*
- Amendment of Article 45: Redirecting DPSP to early childhood care and education for children below the age of six years.
- Insertion of Article 51A(k): Imposing a fundamental duty on parents and guardians to provide educational opportunities to their children between 6 and 14 years.

178. **The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act):**

- Core Statutory Pillars:
  - Section 3: Legal right of every child aged 6–14 to free and compulsory admission, attendance, and completion of elementary education in a neighborhood school.
  - Section 12(1)(c): Mandatory **25% reservation of seats** in Class 1 (or pre-school) in private unaided non-minority schools for children belonging to disadvantaged groups (SC, ST, SEBC) and weaker sections, with state reimbursement.
  - Section 16: The "No-Detention Policy" (and its subsequent dilution via the 2019 Amendment).
  - Section 17: Absolute prohibition of corporal punishment and mental harassment.
  - Sections 18, 19, & 25: Mandatory infrastructure standards, recognition norms, and Pupil-Teacher Ratios (PTR).

179. **Constitutional Challenges to the RTE Act:**

- *Society for Unaided Private Schools of Rajasthan v. Union of India* (2012): Upheld the constitutional validity of Section 12(1)(c) mandating 25% reservation in private schools as a legitimate exercise of state power under Article 21A.
- *Pramati Educational Trust v. Union of India* (2014) (5-Judge Constitution Bench): Re-examined *Society for Unaided Schools*; held that the RTE Act is ultra vires Article 30(1) to the extent it applies to **minority schools (aided or unaided)**. Minority schools are completely immune from the 25% neighborhood quota.

180. **Commercialization of Education, Capitation Fees, and Private Profiteering:**

- Education as an "Occupation" under Article 19(1)(g): *T.M.A. Pai Foundation* (2002) recognized establishing educational institutions as an occupation, but held it is an essentially charitable, noble enterprise.
- The Prohibition on Profiteering and Capitation Fees: *Islamic Academy of Education* (2003) and *P.A. Inamdar* (2005) (7 Judges); creation of permanent statutory-style committees headed by retired High Court judges to fix fee structures and oversee entrance tests.

- *Modern Dental College & Research Centre v. State of M.P.* (2016): Upholding state regulatory power over private professional colleges; education cannot be allowed to become a commercial bazaar.
- Modern challenges: The shadow education system (unregulated coaching institutes, dummy schools, Kota suicides), exorbitant fees, and commercialization violating substantive equality under Article 14.

PART 2: Complete PYQ Question Bank (2015 – 2026)

> ⚠️ ***Note on Speculative Model Question:*** *The 2025–26 (Feb 2026) entry included below represents a forward-looking* ***speculative / model examination question*** *formulated on anticipated syllabus updates, rather than an archived historical sitting.*

All five examination questions mapped to Theme 6 are reproduced below verbatim with their year, question number, and marks:

Year & Session	Question Identifier	Verbatim Examination Question Text	Prescribed Marks
Feb 2026 (2025–26) [Speculative / Model Projection]	Q.3	Discuss the Right to Education as provided under the Indian Constitution. Analyse its scope, implementation, and judicial interpretation under Article 21A.	**25 Marks**
2023	Q.7(a)	Right to Education / शिक्षण हक्क.	**12.5 Marks**
2022	Part A – Q.3	Explain the significance of Article 21A.	**3 Marks**
2016	Q.4	"Right to education is concomitant to the fundamental rights enshrined under Part - III of the Constitution". Explain and discuss.	**25 Marks**
2015 (Set B)	Q.7	Write critical note on Right to Education and Commercialization of education in India.	**25 Marks**

PART 3: Foundational Legal Framework & Constitutional Anatomy

1. The Constitutional Triad of the 86th Amendment Act, 2002

The 86th Constitutional Amendment created a synchronized tripartite educational architecture across Part III, Part IV, and Part IVA:

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                        THE 86TH AMENDMENT (2002) EDUCATION ARCHITECTURE
                                          |
┌─────────────────────────────────────────┼─────────────────────────────────────────┐
        |                                 |                                       |
   PART III: ARTICLE 21A                  PART IV: ARTICLE 45                     PART IVA: ARTICLE 51A(k)
• Fundamental Right for children       • Directive Principle                   • Fundamental Duty
• Age group: 6 to 14 years             • Age group: 0 to 6 years               • Imposed on Parent / Guardian
• Free & Compulsory Elementary         • Early Childhood Care                  • Obligation to provide educational
  Education as determined by law         and Pre-schooling                       opportunities between 6 & 14 yrs
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181. **Article 21A (Fundamental Right):**
   - Applies to children aged **6 to 14 years**;
   - Imposes a mandatory duty on the State to provide **"free and compulsory"** education;
   - "Compulsory" means the State has a legal obligation to ensure compulsory admission, attendance, and completion of elementary education (Grades 1 to 8).

182. **Article 45 (Directive Principle):**
   - Redirected to fill the pre-school void: *"The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years."*

183. **Article 51A(k) (Fundamental Duty):**
   - *"Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years."*

2. Key Provisions of the RTE Act, 2009

- **Section 2(n):** Categorizes schools into: (i) State-run schools; (ii) Aided schools; (iii) Special category schools (Kendriya Vidyalayas, Navodaya Vidyalayas); and (iv) Private unaided schools.
- **Section 12(1)(c) (The Social Integration Clause):** Private unaided schools must admit in Class 1, to the extent of at least **25% of the strength of that class**, children belonging to disadvantaged groups and weaker sections in the neighborhood and provide free elementary education, reimbursed by the Government at the per-child expenditure incurred by the State.
- **Section 13:** Prohibits capitation fees and screening procedures for admission. Violation incurs fine up to 10 times the capitation fee.
- **Section 16 (The No-Detention Debate):** Originally barred holding back or expelling any child until the completion of elementary education. The **Right of Children to Free and Compulsory Education (Amendment) Act, 2019** modified this, allowing states to hold regular exams in Class 5 and Class 8 and detain a child who fails the re-examination.

- **Section 23:** Prescribes mandatory teacher qualifications (enforcing Teacher Eligibility Tests - TET).

PART 4: Landmark & Contemporary Case Law Matrix

Case Name & Citation	Bench Strength & Year	Core Constitutional Issue	Ratio Decidendi & Legal Principles	Verbatim / Key Observation	Application in Exams
Mohini Jain v. State of Karnataka (1992) 3 SCC 666	2 Judges (1992)	Exorbitant capitation fees charged by private medical colleges in Karnataka; whether Right to Education is a Fundamental Right.	**Right to Education is concomitant to Fundamental Rights** under Part III. Right to life under Article 21 cannot be realized without education. Capitation fees violate Article 14 and commercialize education.	*"The right to education flows directly from the right to life... The dignity of man was inviolable before the Constitution and it continues to be so. Education is the essential medium to achieve it."* (Kuldip Singh J.)	Historic breakthrough judgment reading the Right to Education directly into Article 21.
Unni Krishnan, J.P. v. State of A.P. (1993) 1 SCC 645	5 Judges (1993)	Re-examination of *Mohini Jain*; scope of Right to Education and regulation of private professional colleges.	Refined *Mohini Jain*: Every citizen has a fundamental right to education **up to the age of 14 years** under Article 21. Beyond 14, it is limited by economic capacity. Formulated comprehensive regulatory scheme for private colleges.	*"The right to education, which is implicit in the right to life, is not absolute... It is available to every child until he completes the age of 14 years, after which the obligation of State is limited by resources."* (Jeevan Reddy J.)	The direct jurisprudential parent of the 86th Constitutional Amendment and Article 21A.
T.M.A. Pai Foundation v. State of Karnataka (2002) 8 SCC 481	11 Judges (2002)	Overruled the *Unni Krishnan* scheme; right of private entities to establish educational institutions	Establishing educational institutions is an "occupation" under Art. 19(1)(g). Private unaided colleges have autonomy in administration and	*"Education cannot be allowed to be commercialized or turned into a business. An educational institution is established for*	Master authority defining education as an occupation while prohibiting profiteering.

		under Art. 19(1)(g).	fees, but **commercialization and capitation fees are strictly prohibited**. Reasonable surplus is permissible.	*public good and charitable purpose."*	
Islamic Academy of Education v. State of Karnataka (2003) 6 SCC 697	5 Judges (2003)	Clarification of *TMA Pai*; how to prevent capitation fees and enforce merit in private colleges.	Directed the creation of two permanent committees in each State headed by retired High Court Judges: (1) **Fee Regulatory Committee**; (2) **Admission Oversight Committee**, to prevent profiteering.	*"Profiteering and capitation fees are antithetical to education. The State can set up oversight committees to ensure that fee structures are non-exploitative."*	Institutionalized judicial machinery to regulate private college fees and admissions.
P.A. Inamdar v. State of Maharashtra (2005) 6 SCC 537	7 Judges (2005)	State-enforced seat quotas in private unaided professional colleges; cross-subsidization of fees.	State cannot impose reservation quotas on private unaided colleges. Every institution must admit based on merit through Common Entrance Test (CET). Capitation fees and profiteering completely banned.	*"No capitation fee can be charged directly or indirectly. The admission process must satisfy the triple test of fairness, transparency, and non-exploitativenss."* (Lahoti CJ)	The "Triple Test" for admissions and definitive ban on capitation fees.
Society for Unaided Private Schools v. Union of India (2012) 6 SCC 1	3 Judges (2012)	Constitutional validity of Section 12(1)(c) of RTE Act mandating 25% quota in private unaided schools.	RTE Act and Section 12(1)(c) are **constitutionally valid**. Private unaided schools share the constitutional obligation under Article 21A to educate children from weaker sections.	*"Article 21A casts an obligation on the State, and through statutory law, on private actors to achieve social integration and universal primary education."* (Kapadia CJ)	Landmark validation of the 25% inclusion quota in private schooling.

Pramati Educational Trust v. Union of India (2014) 8 SCC 1	5 Judges (2014)	Re-examination of *Society for Unaided Schools*; applicability of RTE Act to minority educational institutions.	Overruled *Society for Unaided Schools* in part: **RTE Act cannot apply to minority schools (aided or unaided)**, as enforcing the 25% quota would violate their autonomy under Article 30(1).	*"If the RTE Act is enforced against minority institutions, their minority character would be abrogated. Article 21A cannot be implemented by destroying Article 30."* (Patnaik J.)	Total exemption of religious and linguistic minority schools from the RTE Act.
Modern Dental College v. State of M.P. (2016) 7 SCC 353	5 Judges (2016)	State regulatory acts fixing fees and conducting common entrance test (CET) for private medical/dental colleges.	Regulatory legislation to curb capitation fees, commercialization, and ensure merit-based admissions does not violate Article 19(1)(g). Right to education includes quality and accessibility.	*"Education is not a commercial commodity... State regulation to prevent profiteering and ensure merit is a reasonable restriction under Article 19(6)."* (Sikri J.)	Definitive modern reaffirmation that education is not trade and capitation fees are illegal.

PART 5: Master Examination Answer Blueprints

MASTER BLUEPRINT 1 (25 MARKS)

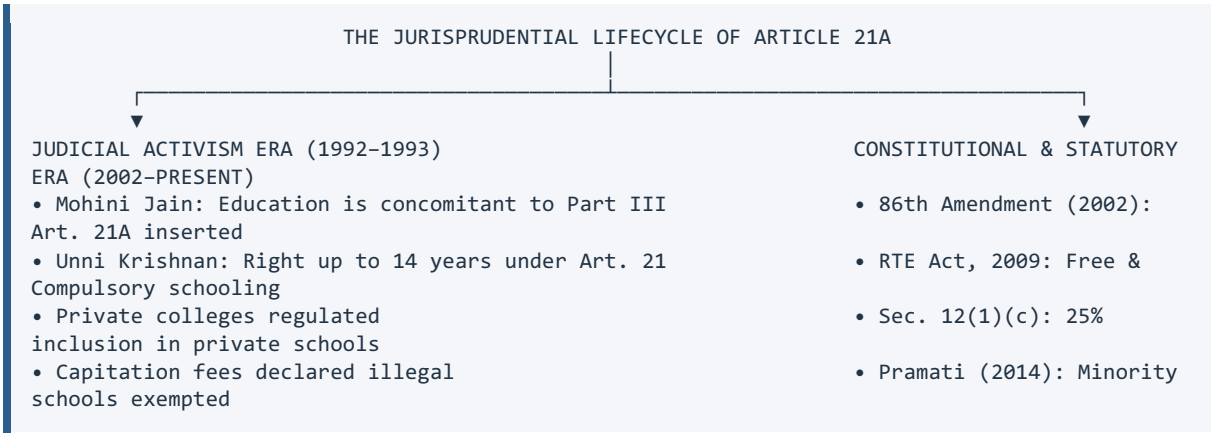
Questions Addressed:

- *Feb 2026 (2025–26) [Speculative / Model Projection], Q.3:* Discuss the Right to Education as provided under the Indian Constitution. Analyse its scope, implementation, and judicial interpretation under Article 21A. [25 Marks]
- *2016, Q.4:* "Right to education is concomitant to the fundamental rights enshrined under Part - III of the Constitution". Explain and discuss. [25 Marks]
- *2023, Q.7(a):* Right to Education / शिक्षण हक्क. [12.5 Marks]

1. Introduction: Education as the Precondition of Liberty

In a democratic republic, education is not a luxury or a charitable gift bestowed by the state; it is the fundamental foundation of civil liberties, democratic citizenship, and individual human dignity. A citizen who cannot read or write cannot exercise freedom of speech under Article 19(1)(a), make an informed choice at the ballot box, or defend their personal liberty under Article 21 against executive tyranny.

As the Supreme Court observed in ***Mohini Jain* (1992)**, the fundamental rights guaranteed in Part III remain hollow promises for an illiterate populace. The elevation of education into **Article 21A** through the **86th Constitutional Amendment Act, 2002** represents one of the crowning triumphs of Indian transformative constitutionalism.



2. "Concomitant to Fundamental Rights": The *Mohini Jain* & *Unni Krishnan* Arc

184. ***Mohini Jain v. State of Karnataka* (1992) 3 SCC 666:**

- Justice Kuldip Singh held that the Right to Life under **Article 21** encompasses the right to live with human dignity, and education is the indispensable medium to attain dignity.
- The Court declared that **the right to education is concomitant to the fundamental rights enshrined in Part III**. An illiterate person is incapacitated from exercising civil, political, and economic rights.
- The Court held that charging exorbitant "capitation fees" by private educational colleges violates Article 14, as it converts education into a luxury available only to the wealthy.

185. ***Unni Krishnan, J.P. v. State of Andhra Pradesh* (1993) 1 SCC 645:**

- A 5-Judge Constitution Bench confirmed that education is a fundamental right implicit in Article 21, but pragmatically harmonized it with the state's financial resources:
  - Every child has an **absolute, enforceable fundamental right to free education up to the age of 14 years**;
  - Beyond 14 years, the right is circumscribed by the economic capacity of the State.
- This judicial pronouncement directly compelled Parliament to enact the 86th Amendment Act in 2002, formally embedding Article 21A.

3. Scope and Constitutional Anatomy of Article 21A

Article 21A states: *"The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."*

- **"Free" Education:** No child shall be liable to pay any fee, charges, or expenses that prevent them from pursuing and completing elementary education. It encompasses free tuition, textbooks, uniforms, learning materials, and mid-day meals.
- **"Compulsory" Education:** Imposes a mandatory legal obligation on the appropriate Government and local authorities to provide free elementary education and ensure compulsory admission, attendance, and completion of elementary education for every child in the 6–14 age bracket.

4. Implementation through the RTE Act, 2009 & Judicial Adjudication

To execute the mandate of Article 21A, Parliament enacted the **Right of Children to Free and Compulsory Education Act, 2009 (RTE Act)**:

186. **The 25% Private School Inclusion Mandate (Section 12(1)(c)):**

- Mandates that every private unaided school must reserve at least 25% of its entry-level seats for children belonging to economically weaker sections and disadvantaged groups in the neighborhood.
- In ***Society for Unaided Private Schools of Rajasthan v. Union of India* (2012) 6 SCC 1**, the Supreme Court upheld Section 12(1)(c), declaring that the state can enlist private educational actors in fulfilling the constitutional goal of social integration and universal primary schooling.

187. **The Minority Exemption in *Pramati Educational Trust* (2014):**

- A 5-Judge Constitution Bench held that the RTE Act, particularly Section 12(1)(c), **cannot apply to aided or unaided minority educational institutions**, because enforcing the quota would destroy their minority character and administrative autonomy protected under **Article 30(1)**.

188. **The No-Detention Debate & The 2019 Amendment:**

- Section 16 originally prohibited holding back any child until Grade 8, aimed at preventing dropouts. However, severe learning deficits prompted Parliament to pass the **RTE (Amendment) Act, 2019**, permitting states to re-introduce examinations and detention in Classes 5 and 8.

5. Contemporary Challenges in Implementation

Despite statutory guarantees, Article 21A faces severe systemic bottlenecks:

- *Learning Poverty vs. Enrollment:* While enrollment has surpassed 97%, annual ASER reports reveal that foundational literacy and numeracy remain alarmingly poor (e.g., Grade 5 children unable to read Grade 2 text).
- *Teacher Deficit & TET Non-Compliance:* Hundreds of thousands of teacher posts remain vacant, and reliance on under-trained ad-hoc contract teachers undermines educational quality.
- *The Digital Divide:* The COVID-19 pandemic exposed the stark reality that millions of underprivileged rural children lacking smartphones, laptops, and broadband internet were completely excluded from remote education, violating Article 21A.

6. Conclusion

Article 21A has transformed elementary education from a state privilege into a sovereign right of the child. However, constitutional success cannot be measured by physical school enrollment alone. To fulfill the vision of *Mohini Jain* and *Unni Krishnan*, the State must transition from mere "schooling" to "learning", investing in teacher excellence, modern infrastructure, and bridge education to make equality of opportunity a reality for every child.

MASTER BLUEPRINT 2 (25 MARKS)

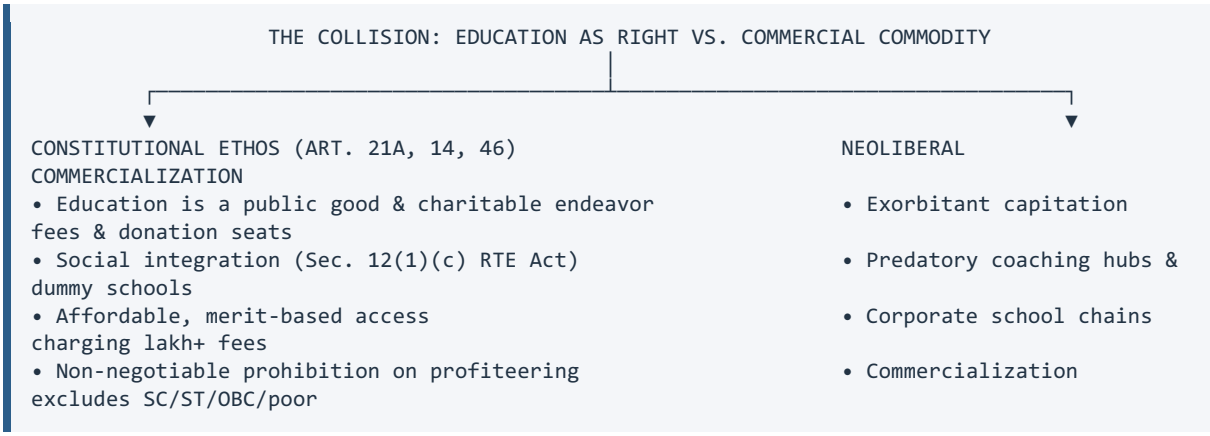
Question Addressed:

- *2015 (Set B), Q.7:* Write critical note on Right to Education and Commercialization of education in India. [25 Marks]

1. Introduction: The Clash between Public Good and Commercial Enterprise

Education is intrinsically a noble, charitable, and public welfare endeavor. The Indian constitutional vision, expressed through the Preamble (Justice, Equality, Fraternity) and Articles 21A, 41, 45, and 46, envisions education as a universal social equalizer.

However, over the past three decades, the withdrawal of the State from higher and secondary education, combined with the explosive growth of the private education industry, has led to **unbridled commercialization, predatory profiteering, and the commodification of learning**. The student is no longer treated as a future citizen of the Republic, but as a commercial consumer in an unregulated educational market.



2. The Judicial War against Capitation Fees

The Indian judiciary has waged a relentless constitutional war against the menace of capitation fees:

- ***Mohini Jain* (1992):** The Supreme Court struck down the capitation fee system in Karnataka medical colleges, holding that charging capitation fees amounts to selling education to the highest bidder, violating Article 14 and destroying the right to life under Article 21.
- ***T.M.A. Pai Foundation* (2002):** The 11-Judge Constitution Bench recognized that private citizens have the fundamental right to establish educational institutions under **Article 19(1)(g)** as an "occupation". However, the Court strictly held:

> *"Education is a noble vocation and cannot be allowed to be commercialized or converted into a business... A reasonable surplus for development and expansion is permissible, but profiteering and capitation fees are totally impermissible."*

- ***Islamic Academy of Education* (2003) & *P.A. Inamdar* (2005):** The Court instituted permanent regulatory committees headed by retired High Court judges:
  189. *Fee Regulatory Committee:* To audit financial accounts, ensure fees are reasonable, and prevent profiteering;
  190. *Admission Oversight Committee:* To enforce merit-based Common Entrance Tests (CET) and prevent black-market management quota auctions.
- ***Modern Dental College & Research Centre v. State of M.P.* (2016) 7 SCC 353:** A 5-Judge Constitution Bench upheld state legislation regulating fees and entrance tests, reaffirming that:

> *"Education is not a commercial commodity... State regulation to prevent commercialization and exploitation of students is a reasonable restriction under Article 19(6)."*

3. Modern Manifestations of Commercialization

191. **The Shadow Education Industry (The Coaching Mafia):**
    - Multibillion-dollar private coaching conglomerates in hubs like Kota, Hyderabad, and Delhi have cannibalized regular schooling.
    - The proliferation of "dummy schools"—where students enroll only on paper while attending 14-hour daily coaching drills—subverts the holistic educational vision of Article 21A and has caused an epidemic of student depression and suicides.

192. **Exorbitant Private School Fees & Evading RTE:**
    - Elite private schools charge exorbitant development fees, admission fees, and annual charges running into lakhs, effectively segregating education on class lines.
    - Private managements frequently evade the 25% RTE quota under Section 12(1)(c) by delaying admissions, demanding unnecessary documents, or segregating underprivileged children inside classrooms.

193. **Privatization of Higher & Technical Education:**
    - Deemed universities and private medical/dental colleges charge millions of rupees under "Management/NRI Quotas", ensuring that medical and engineering seats are captured by wealth rather than merit.

4. Constitutional Consequences of Commercialization

- **Destruction of Substantive Equality (Article 14):** When access to quality education is determined by parental purchasing power rather than talent, the constitutional promise of equal opportunity is destroyed.
- **Exclusion of Marginalized Communities:** SC, ST, and economically weaker students are priced out of premier institutions, perpetuating inter-generational inequality.
- **Decline in Educational Quality & Ethical Standards:** Profit-driven institutions cut corners on faculty salaries, laboratories, and research, producing poorly trained graduates and eroding academic integrity.

5. Conclusion & Actionable Remedies

Education cannot be abandoned to the unregulated forces of the free market. To rescue Indian education from commercial predators:

194. Enact a strict **Central Law Regulating Private Coaching Conglomerates**, banning dummy schools, and capping study hours;
195. Strengthen **State Fee Regulatory Committees** with penal powers, forensic audit capabilities, and criminal prosecution for charging capitation fees;
196. Double public spending on state-run primary and secondary schools to 6% of GDP (as recommended by the Kothari Commission and NEP 2020), restoring public institutions as models of academic excellence.

MASTER BLUEPRINT 3 (3 MARKS)

Question Addressed:

- *2022, Part A – Q.3:* Explain the significance of Article 21A. [3 Marks]

Model Answer:

Article 21A, inserted by the **86th Constitutional Amendment Act, 2002**, made the **Right to Free and Compulsory Education a Fundamental Right** for all children aged **6 to 14 years**.

Its profound constitutional significance lies in:

197. **Transforming Education into an Enforceable Right:** Elevating education from a non-justiciable Directive Principle (former Article 45) into an enforceable Part III Fundamental Right.
198. **Imposing an Obligation on the State:** Compelling the State to guarantee free admission, attendance, and elementary schooling (Grades 1 to 8) without economic barriers.
199. **Paving the Way for Social Integration:** Providing the constitutional foundation for the **RTE Act, 2009**, including the 25% inclusion mandate in private unaided schools (Section 12(1)(c)) for disadvantaged children.

PART 6: Critical Commentary, Contemporary Controversies & Reform Commission Recommendations

1. The Post-COVID Digital Divide & Learning Deficits

The complete closure of schools during the COVID-19 pandemic highlighted the profound inequality of Article 21A in the digital era:

- Rural and marginalized children lacked digital devices and internet connectivity, resulting in massive dropouts and learning loss.
- In ***Independent Schools Federation of India v. State of Maharashtra* (2021)**, courts emphasized that the State has a positive constitutional obligation under Article 21A to bridge the digital divide by distributing digital hardware and providing internet access to poor students.

2. The Dilution of the No-Detention Policy

The 2019 Amendment to Section 16 of the RTE Act dismantled the blanket prohibition against failing students in elementary school:

- Critics argued that the original policy created unaccountable systems where students reached Grade 9 without acquiring foundational reading or math skills.
- Child rights advocates argue that detaining 10-year-olds pushes them out of the schooling system into child labor, shifting the blame for systemic teaching failures onto the child.

3. Major Reform Commission Recommendations on Education

REFORM COMMISSIONS ON RIGHT TO EDUCATION

Commission / Report	Key Recommendations	Status / Policy Action
Kothari Commission (1964–1966)	• Public education budget to reach 6% of national GDP • Common School System	Reaffirmed in NEP 2020; actual spending remains around 3–4% of GDP
Justice Verma Commission on Teacher Education (2012)	• Mandatory accreditation of teacher education colleges • Shut down fraudulent B.Ed/	National Council for Teacher Education (NCTE) regulatory reforms

	D.El.Ed commercial shops	initiated
National Education Policy (NEP 2020 - Kasturirangan)	• Universal pre-primary to secondary education (3–18) • Foundational literacy focus	Phased implementation under 5+3+3+4 curricular structure

200. **National Education Policy (NEP 2020 - Dr. K. Kasturirangan Committee):**

- Proposed expanding the scope of the Right to Education from the current 6–14 years to **3 to 18 years**, covering early childhood care up to Grade 12.
- Recommended stringent regulation of commercialization, heavy investment in foundational literacy, and establishing a single overarching regulator—the Higher Education Commission of India (HECI).

201. **Justice J.S. Verma Commission on Teacher Education (2012):**

- Uncovered that over 80% of private teacher training institutes in India were commercial degree-selling shops.
- Recommended regular institutional audits, centralized entrance exams for teacher education, and criminal penalties for non-performing commercial institutions.

202. **Conclusion:** The Right to Education under Article 21A is the greatest civilizing promise of the Indian Republic. India cannot fulfill its destiny as a knowledge superpower if its children are trapped between underfunded government schools and predatory commercial coaching factories. Education must be preserved as an egalitarian public trust.

Paper 2: Indian Constitutional Law – The New Challenges

Master Study Material: Theme 7

THEME 7: Independence of Judiciary, Judicial Appointments, Review & Activism

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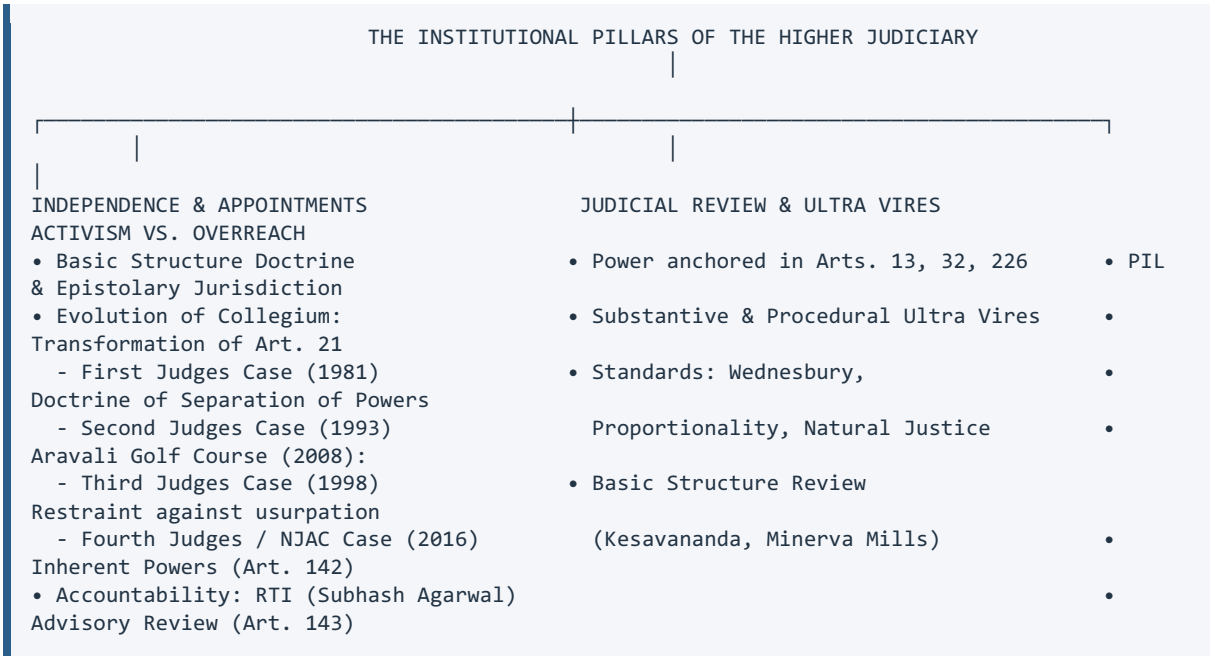
PART 1: Exhaustive Syllabus & Thematic Scope

The Judiciary stands as the supreme sentinel on the qui vive, guarding the Constitution, enforcing the Rule of Law, and defending Fundamental Rights against executive arbitrariness and legislative overreach. Far from being a mere dispute-resolution mechanism, the Indian higher judiciary (Supreme Court and High Courts) is an independent, co-equal organ of state endowed with the solemn power of Judicial Review.

Over seven decades, the institutional dynamics of the Indian judiciary have witnessed monumental battles: the struggle for institutional independence in the appointment of judges (The Four Judges Cases), the rise of Public Interest Litigation (PIL) and Judicial Activism, the delicate balance between Judicial Activism and Judicial Overreach, the imperative of Judicial Accountability (RTI and the Office of the CJI), and the expansive deployment of Inherent Powers under Article 142.



Detailed Syllabus Breakdown:

203. **Constitutional Framework Securing Judicial Independence:**

- Independence of the judiciary as part of the **Basic Structure** of the Constitution (*Kesavananda Bharati*, 1973; *Indira Nehru Gandhi*, 1975; *Subhash Sharma*, 1991; *NJAC Case*, 2016).
- Institutional safeguards in the Constitution:

- Security of tenure and high threshold for removal / impeachment (Article 124(4) and 217(1) read with the Judges (Inquiry) Act, 1968);
- Fixed service conditions, pensions, and non-subjection to parliamentary vote (salaries charged directly to the Consolidated Fund of India / States under Articles 125, 146, 221, 229);
- Absolute immunity from legislative debate: Bar on discussing the conduct of Supreme Court and High Court judges in Parliament or State Legislatures (Articles 121 and 211);
- Contempt of Court powers as a Court of Record (Articles 129 and 215);
- Complete administrative autonomy over institutional staff and court administration (Articles 146 and 229).

204. **The Battle for Appointments: The Four Judges Cases and the Collegium System:**

- Articles 124(2) and 217(1): The phrase *"after consultation with such of the Judges of the Supreme Court and of the High Courts... as the President may deem necessary"*.
- *First Judges Case (S.P. Gupta v. Union of India, 1981):* Executive primacy upheld; "consultation" does not mean "concurrence"; President can disregard CJI's view for cogent reasons.
- *Second Judges Case (Supreme Court Advocates-on-Record Association v. Union of India, 1993):* Overruled *S.P. Gupta*; CJI primacy established; "consultation" means "concurrence"; birth of the Collegium (CJI + 2 senior-most judges).
- *Third Judges Case (Special Reference No. 1 of 1998, 1998):* Advisory opinion; expanded the Collegium to **CJI + 4 senior-most judges** for the Supreme Court, and **CJI + 2 senior-most judges** for High Courts. Reaffirmed that consultation requires a pluralistic, consensus-driven process.
- *The 99th Constitutional Amendment Act, 2014 & The National Judicial Appointments Commission (NJAC) Act, 2014:* Creation of a 6-member Commission comprising CJI, 2 senior SC judges, Union Law Minister, and 2 Eminent Persons.
- *Fourth Judges Case (NJAC Judgment, 2016 - 5 Judges):* The 99th Amendment and NJAC Act struck down as unconstitutional by a 4:1 majority. Judicial primacy in appointment of judges is an integral component of the Independence of the Judiciary, which is part of the Basic Structure.
- The Memorandum of Procedure (MoP) standoff and contemporary criticisms: Opacity, nepotism, lack of diversity, and post-retirement political appointments.

205. **Judicial Accountability & Transparency:**

- The False Dichotomy: Independence vs. Accountability.
- *CPIO, Supreme Court of India v. Subhash Chandra Agarwal* (2020) (5-Judge Constitution Bench): The **Office of the Chief Justice of India is a "Public Authority"** under Section 2(h) of the Right to Information Act, 2005. Judicial independence does not require secrecy; transparency bolsters public trust.
- The In-House Procedure for investigating judicial misconduct (*C. Ravichandran Iyer v. Justice A.M. Bhattacharjee*, 1995).
- Voluntary disclosure of assets by higher judiciary judges.
- Contempt of Court: Balancing judicial dignity against legitimate public critique (*In Re Prashant Bhushan*, 2021).

206. **Judicial Review and the Doctrine of Ultra Vires:**

- Conceptual foundations: Articles 13, 32, 136, and 226. Judicial review as part of the Basic Structure (*Minerva Mills*, 1980; *L. Chandra Kumar*, 1997).
- The Doctrine of Ultra Vires:
  - *Substantive Ultra Vires:* (a) Lack of legislative competence under Seventh Schedule lists; (b) Violation of Fundamental Rights (Part III); (c) Violation of any explicit constitutional limitation or the Basic Structure.
  - *Procedural Ultra Vires:* Non-compliance with mandatory statutory procedures, natural justice, or constitutional prerequisites.
- Grounds of Administrative Judicial Review: Illegality, Irrationality (*Wednesbury* unreasonableness), Procedural Impropriety, and the modern **Doctrine of Proportionality** (*Tata Cellular*, 1994; *Om Kumar*, 2001).

207. **Judicial Activism vs. Judicial Overreach:**

- Origins of Judicial Activism: Epistolary jurisdiction, dismantling *locus standi*, and the creation of Public Interest Litigation (PIL) (*Bandhua Mukti Morcha*, *Hussainara Khatoon*, *Sunil Batra*, *Vishaka*).
- Expanding the frontiers of Article 21: Right to clean environment, speedy trial, privacy, education, health, and livelihood.
- Judicial Overreach / Usurpation: When the judiciary crosses the boundary into policy formulation, budgetary allocation, or executive administration (e.g., monitoring waste management, banning liquor shops along highways, framing coal policies).
- The Doctrine of Separation of Powers: *Asif Hameed v. State of J&K* (1989) and *Divisional Manager, Aravali Golf Course v. Chander Haas* (2008) (warning judges against judicial imperialism).

208. **Inherent and Special Jurisdictions of the Supreme Court:**

- *Article 142 (Power to do "Complete Justice"):* Plenary inherent jurisdiction; cannot be fettered by statutory provisions (*Union Carbide*, *Supreme Court Bar Association*, *Ayodhya Case*, *Shilpa Sailesh* 2023 - dissolving dead marriages on ground of irretrievable breakdown).
- *Article 143 (Advisory Jurisdiction):* Presidential reference on questions of law or fact of public importance. Precedents: *In Re Delhi Laws Act* (1951), *In Re Berubari Union* (1960), *Special Courts Bill* (1978), *Ayodhya Reference* (1994), *2G Spectrum Reference* (2012).

PART 2: Complete PYQ Question Bank (2015 – 2026)

> ⚠ ***Note on Speculative Model Question:*** *The 2025–26 (Feb 2026) entry included below represents a forward-looking* ***speculative / model examination question*** *formulated on anticipated syllabus updates, rather than an archived historical sitting.*

All fifteen examination questions mapped to Theme 7 are reproduced below verbatim with their year, question number, and marks:

Year & Session	Question Identifier	Verbatim Examination Question Text	Prescribed Marks

Feb 2026 (2025–26) [Speculative / Model Projection]	Q.4	"Independence of judiciary forms the backbone of Constitutional democracy." Discuss this statement with reference to Constitutional provisions and judicial pronouncements regarding appointment and accountability of judges.	**25 Marks**
May 2025 (2024–25)	Q.3	Critically examine the concept of judicial activism in India. How does it differ from judicial overreach? Support your answer with relevant case laws.	**25 Marks**
June 2024	Q.6(a)	Appointment, transfer and removal of judges of higher judiciary.	**12.5 Marks**
2022	Part A – Q.5	What is Judicial Review?	**3 Marks**
2022	Part B – Q.8	Examine the doctrine of 'Separation of Powers' and its relevancy in modern constitutional governance.	**10 Marks**
2019	Q.2	Explain about doctrine of Ultravires as one of the grounds of judicial review with the help of case law.	**25 Marks**
2018 (Set A)	Q.1	Explain provision regarding appointment of judges of higher judiciary under the Constitution with the help of leading case laws.	**25 Marks**
2018 (Set A)	Q.5	Discuss exercise of powers conferred on competent courts which are inherent in nature.	**25 Marks**
2018 (Set A)	Q.7	Write critically on Judicial Independence and accountability in India.	**25 Marks**

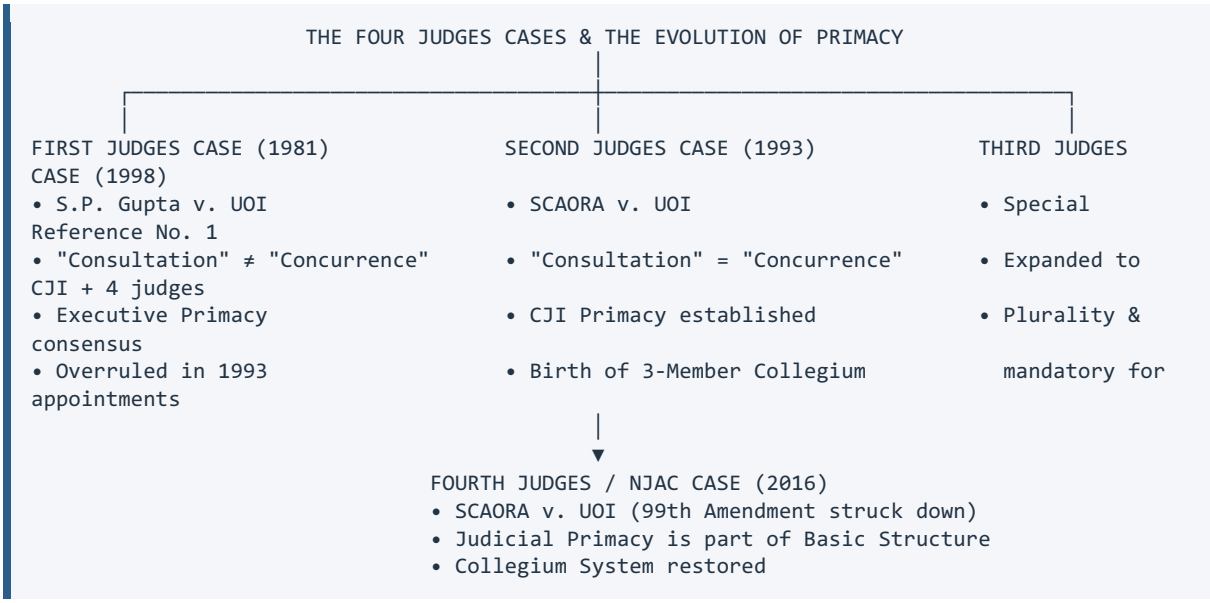
2018 (Set B)	Q.1	Explain provision regarding appointment of judges of higher judiciary under the Constitution with the help of leading case laws.	**25 Marks**
2018 (Set B)	Q.5	Discuss advisory jurisdiction of Supreme Court giving some examples and case law.	**25 Marks**
2018 (Set B)	Q.7	Discuss exercise of powers conferred on competent courts which are inherent in Nature.	**25 Marks**
2016	Q.6	Explain provisions regarding appointment of judges of higher judiciary under the Constitution with the help of leading case laws.	**25 Marks**
2015 (Set A)	Q.3	Write critically on judicial independence and accountability in India.	**25 Marks**
2015 (Set B)	Q.5	Write critically on judicial independence and accountability in India.	**25 Marks**

PART 3: Foundational Legal Framework & Constitutional Anatomy

1. Constitutional Provisions Governing Appointments & Tenure

- **Article 124(2) (Appointment of Supreme Court Judges):**
  - Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal *"after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose"*.
  - Mandatory proviso: In the case of appointment of a Judge other than the Chief Justice, the **Chief Justice of India shall always be consulted**.
- **Article 217(1) (Appointment of High Court Judges):**
  - Appointed by the President after consultation with: (1) The Chief Justice of India; (2) The Governor of the State; and (3) In the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court.
- **Article 222 (Transfer of High Court Judges):**
  - The President may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to any other High Court.

- **Article 124(4) & 124(5) (Removal / Impeachment of Judges):**
  - A Judge of the Supreme Court or High Court (via Art. 218) can only be removed by an order of the President passed after an address by **each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members present and voting** in the same session.
  - Grounds strictly limited to: (1) **Proved misbehaviour**; or (2) **Incapacity**.
  - Procedure governed by the **Judges (Inquiry) Act, 1968** (investigation by a 3-member committee consisting of a SC judge, a HC Chief Justice, and a distinguished jurist).



2. Constitutional Architecture of Judicial Review

- **Article 13(2):** Declares that the State shall not make any law which takes away or abridges the rights conferred by Part III, and any law made in contravention shall be void to the extent of contravention.
- **Article 32 & 226:** Vests the Supreme Court and High Courts with plenary powers to issue directions, orders, or writs (habeas corpus, mandamus, prohibition, quo warranto, and certiorari).
- **Article 131–136:** Comprehensive appellate and original jurisdiction.
- **Article 141:** Law declared by the Supreme Court is binding on all courts within the territory of India.
- **Article 142:** Plenary inherent power to pass any decree or order necessary for doing *"complete justice"* in any cause or matter pending before it.
- **Article 143 (Advisory Jurisdiction):** Empowers the President to refer to the Supreme Court any question of law or fact of public importance for its advisory opinion.

PART 4: Landmark & Contemporary Case Law Matrix

Case Name & Citation	Bench Strength & Year	Core Constitutional Issue	Ratio Decidendi & Legal Principles	Verbatim / Key Observation	Application in Exams

Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225	13 Judges (1973)	Extent of Parliament's amending power under Article 368; validity of 24th, 25th, and 29th Amendments.	Established the **Basic Structure Doctrine**. Parliament cannot alter the basic structure. Judicial Review and Independence of the Judiciary are inviolable basic features.	*"Judicial review is a basic feature of the Constitution which cannot be taken away even by an amendment under Article 368."* (Khanna J.)	Master foundation for judicial review and the limits of parliamentary amendment.
S.P. Gupta v. Union of India (First Judges Case) (1981) Supp SCC 87	7 Judges (1981)	Constitutional meaning of "consultation" in Art. 124(2) and 217(1); transfer of High Court judges.	"Consultation" does not mean "concurrence". The Central Government has **executive primacy** in judicial appointments. CJI's opinion is not binding on the President.	*"Consultation must be full and effective, but it does not mean consent or concurrence... The ultimate power of appointment vests in the Central Government."* (Bhagwati J.)	The starting point of the appointment controversy; favored executive supremacy (later overruled).
SCAORA v. Union of India (Second Judges Case) (1993) 4 SCC 441	9 Judges (1993)	Review of *S.P. Gupta*; primacy of CJI in judicial appointments to insulate judiciary from executive bias.	Overruled *S.P. Gupta*. **"Consultation" means "Concurrence"**. The CJI has primacy in judicial appointments to safeguard judicial independence. Created the **Collegium** (CJI + 2 senior judges).	*"Judicial independence is a basic feature... Primacy of the Chief Justice of India in appointments is essential to ensure that the judiciary remains insulated from political executive control."* (Verma J.)	Landmark ruling establishing the Collegium System and judicial primacy.
Special Reference No. 1 of 1998 (Third Judges Case) (1998) 7 SCC 739	9 Judges (1998)	Presidential reference under Art. 143 clarifying the consultation process and collegium composition.	Reaffirmed *Second Judges Case*. Expanded Collegium for Supreme Court to **CJI + 4 senior-most judges**, and for High Courts	*"The opinion of the Chief Justice of India does not mean his individual opinion, but the opinion of a collegium of*	Definitive operating blueprint of the modern Collegium System under Article 124(2).

			to **CJI + 2 senior judges**. CJI cannot act alone; consultation must be a documented plurality.	*judges formed in consultation with his seniormost colleagues."*	
L. Chandra Kumar v. Union of India (1997) 3 SCC 261	7 Judges (1997)	Constitutional validity of exclusion of High Court writ jurisdiction under Art. 323A/323B (Tribunals).	Power of judicial review under **Articles 226 and 32 is an integral part of the Basic Structure**. Decisions of Central Administrative Tribunals (CAT) must be subject to HC Division Bench review under Art. 226.	*"The power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 is an integral and essential feature of the Constitution."*	Inviolable authority establishing that judicial review under Articles 226 and 32 can never be excluded.
SCAORA v. Union of India (NJAC / Fourth Judges Case) (2016) 5 SCC 1	5 Judges (2016)	Constitutional validity of the 99th Constitutional Amendment and the National Judicial Appointments Commission (NJAC) Act, 2014.	In a 4:1 majority, the **99th Amendment and NJAC Act were declared unconstitutional**. Primacy of the judiciary in appointments is an indispensable component of judicial independence and the Basic Structure. Inclusion of Law Minister compromised independence.	*"Judicial primacy in appointments is part of the basic structure... Executive participation in judicial appointments with veto power creates an impermissible conflict of interest."* (Khehar J.)	Landmark contemporary authority invalidating the NJAC and restoring the Collegium.
Divisional Manager, Aravali Golf Course v. Chander Haas (2008) 1 SCC 683	2 Judges (2008)	Creation of permanent posts by judicial decree; boundary between Judicial Activism and Judicial Overreach.	Courts cannot usurp the functions of the executive or legislature under the garb of activism. **Judicial Overreach violates the Separation of Powers**. Judges	*"Judges must know their limits and not try to run the Government. Judicial activism must not become judicial adventurism or judicial*	Definitive authority warning against Judicial Overreach and defending Separation of Powers.

			must exercise self-restraint.	*imperialism."* (Katju J.)	
CPIO, Supreme Court of India v. Subhash Chandra Agarwal (2020) 5 SCC 481	5 Judges (2020)	Whether the Office of the Chief Justice of India is a "Public Authority" under Section 2(h) of RTI Act.	**The Office of the CJI is a Public Authority under RTI**. Judicial independence does not mean insulation from transparency. Public interest in disclosure must be balanced against right to privacy of judges.	*"Judicial independence and accountability go hand in hand... Transparency does not undermine judicial independence; rather, it strengthens public confidence in the institution."* (Sanjiv Khanna J.)	Historic ruling placing the higher judiciary under the Right to Information regime.
Union Carbide Corporation v. Union of India (1991) 4 SCC 584	5 Judges (1991)	Settlement of Bhopal Gas Tragedy claims; scope and extent of Supreme Court's powers under Article 142.	Power under Article 142 to do **"complete justice" is plenary and inherent**. It is not fettered or restrained by statutory provisions, though it must respect constitutional prohibitions.	*"The power under Article 142 is at large, unfettered by statutory limitations... No statutory enactment can override the constitutional power to do complete justice."*	Foundational precedent on the unlimited horizon of Article 142 inherent powers.
In Re Special Reference No. 1 of 2012 (2G Spectrum Case) (2012) 10 SCC 1	5 Judges (2012)	Presidential reference under Art. 143; whether auction is the only constitutionally permissible method for allocating natural resources.	Advisory opinion under Article 143 is not binding, but carries persuasive weight. Auction is not the sole constitutional mandate for allocating all natural resources; non-arbitrariness under Art. 14 is the test.	*"Advisory jurisdiction under Article 143 is contemplated to facilitate governance by answering grave legal doubts... It cannot be used to sit in appeal over earlier judgments."*	Classic authority on the scope, purpose, and non-binding nature of Article 143 advisory references.

PART 5: Master Examination Answer Blueprints

MASTER BLUEPRINT 1 (25 MARKS)

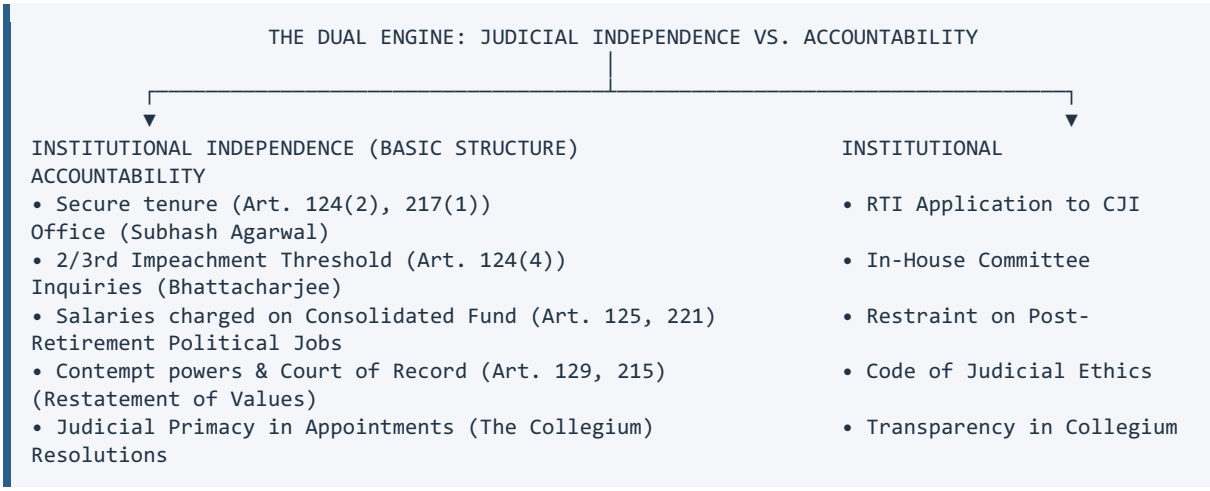
Questions Addressed:

- *Feb 2026 (2025–26) [Speculative / Model Projection], Q.4:* "Independence of judiciary forms the backbone of Constitutional democracy." Discuss this statement with reference to Constitutional provisions and judicial pronouncements regarding appointment and accountability of judges. [25 Marks]
- *2018 (Set A), Q.1 & 2018 (Set B), Q.1 & 2016, Q.6:* Explain provision regarding appointment of judges of higher judiciary under the Constitution with the help of leading case laws. [25 Marks]
- *2018 (Set A), Q.7 & 2015 (Set A), Q.3 & 2015 (Set B), Q.5:* Write critically on Judicial Independence and accountability in India. [25 Marks]
- *June 2024, Q.6(a):* Appointment, transfer and removal of judges of higher judiciary. [12.5 Marks]

1. Introduction & Theoretical Foundation

An independent judiciary is the cardinal pillar upon which the superstructure of constitutional democracy rests. As Montesquieu observed in *The Spirit of the Laws*, *"There is no liberty if the power of judging be not separated from the legislative and executive powers."*

In a constitutional democracy governed by a written constitution and fundamental rights, the higher judiciary performs the dual role of **arbiter of federal disputes** and **guardian of human freedoms**. If judges are beholden to the political executive for their appointment, promotion, transfer, or post-retirement survival, the Rule of Law is reduced to an illusion. Consequently, the Supreme Court has repeatedly affirmed in ***Kesavananda Bharati* (1973)**,* Indira Gandhi *(1975), and the* **NJAC Case* (2016)** that the **Independence of the Judiciary is an immutable feature of the Basic Structure**.



2. Constitutional Safeguards Securing Independence

The Framers embedded formidable structural safeguards into the text of the Constitution to insulate judges from executive influence:

209. **Security of Tenure & Stringent Removal (Articles 124(4) & 217(1)):** A judge can be removed only by Presidential order following an address by both Houses of Parliament passed by a **special majority** (majority of total membership and 2/3rd of members present and voting) on the grounds of "proved misbehaviour or incapacity" under the Judges (Inquiry) Act, 1968. No higher court judge has ever been successfully removed through this process, underscoring tenure security.
210. **Financial Insulation (Articles 125, 146, 221, 229):** Judicial salaries, allowances, and court administrative expenses are charged directly upon the **Consolidated Fund** of India or the State and cannot be voted upon by Parliament or State Legislatures.
211. **Immunity from Legislative Censorship (Articles 121 & 211):** Parliament and State Legislatures are strictly barred from discussing the conduct of any Supreme Court or High Court judge in the discharge of their judicial duties.
212. **Contempt Jurisdiction (Articles 129 & 215):** The Supreme Court and High Courts are Courts of Record possessing the inherent power to punish for contempt of court, defending their institutional dignity.

3. The Great Appointments Battle: From Executive Primacy to the Collegium

The method of appointing judges to the Supreme Court (Article 124(2)) and High Courts (Article 217(1)) has been the primary constitutional battleground:

213. **The Phase of Executive Primacy (*First Judges Case - S.P. Gupta*, 1981):** A 7-Judge Bench held that the constitutional term "consultation" did not mean "concurrence". The Central Government possessed ultimate primacy in appointing judges. This led to executive abuse, supersession of senior judges during the Emergency, and retaliatory transfers.
214. **The Birth of Judicial Primacy (*Second Judges Case - SCAORA*, 1993):** A 9-Judge Constitution Bench overruled *S.P. Gupta*, holding that to safeguard judicial independence, "consultation" must be read as **"concurrence"**. The opinion of the Chief Justice of India was given primacy, leading to the creation of the **Collegium** (CJI + 2 senior judges).
215. **Institutionalizing Plurality (*Third Judges Case*, 1998):** In an Article 143 advisory reference, a 9-Judge Bench expanded the Collegium to **CJI + 4 senior-most judges** for Supreme Court appointments and **CJI + 2 senior-most judges** for High Court appointments. The Court held that consultation requires a transparent, collective consensus; an individual CJI opinion without consulting the Collegium has no constitutional validity.
216. **The Historic Strike-down of NJAC (*Fourth Judges Case*, 2016 - 5 Judges):**
    - Parliament unanimously passed the **99th Constitutional Amendment Act, 2014** and the **NJAC Act, 2014**, creating a National Judicial Appointments Commission comprising the CJI, 2 senior judges, the Law Minister, and 2 eminent persons.
    - By a 4:1 majority, the Supreme Court struck down the 99th Amendment and NJAC as unconstitutional, holding that **Judicial Primacy in the appointment of judges is an essential part of the Basic Structure**. Including the Law Minister gave the executive a direct veto in selecting the very judges who would review executive actions, destroying independence.

4. The Counter-Imperative: Judicial Accountability

Independence cannot become a license for institutional opacity or nepotism. Modern constitutionalism demands that the judiciary balance independence with accountability:

217. **The RTI Breakthrough in *CPIO, Supreme Court v. Subhash Chandra Agarwal* (2020) 5 SCC 481:**
    - A 5-Judge Constitution Bench held that the **Office of the Chief Justice of India is a "Public Authority"** under Section 2(h) of the RTI Act, 2005.
    - Justice Sanjiv Khanna memorably wrote: *"Judicial independence and accountability go hand in hand... Transparency does not undermine judicial independence; it reinforces public trust in the administration of justice."*
218. **In-House Mechanism for Misconduct (*C. Ravichandran Iyer*, 1995):**
    - Recognizing that impeachment under Article 124(4) is an extreme "nuclear option", the Supreme Court established an internal, peer-led In-House Committee procedure to investigate allegations of corruption or ethical deviance against sitting judges.
219. **The "Restatement of Values of Judicial Life" (1997):**
    - A comprehensive code of judicial ethics adopted by the full Supreme Court bench, barring judges from hearing cases involving family members, maintaining close associations with political figures, or trading in stocks on insider information.

5. Critical Synthesis & Conclusion

The Indian higher judiciary is unique globally in that judges appoint themselves through the Collegium system. While this was historically necessary to insulate the institution from authoritarian executive encroachment, the Collegium must urgently address legitimate criticisms regarding opacity, subjective criteria, lack of gender and social diversity, and the "cooling-off period" for post-retirement political appointments.

True judicial independence thrives not in unaccountable secrecy, but in transparent, merit-based governance that commands the unshakeable faith and respect of the sovereign citizens of India.

MASTER BLUEPRINT 2 (25 MARKS)

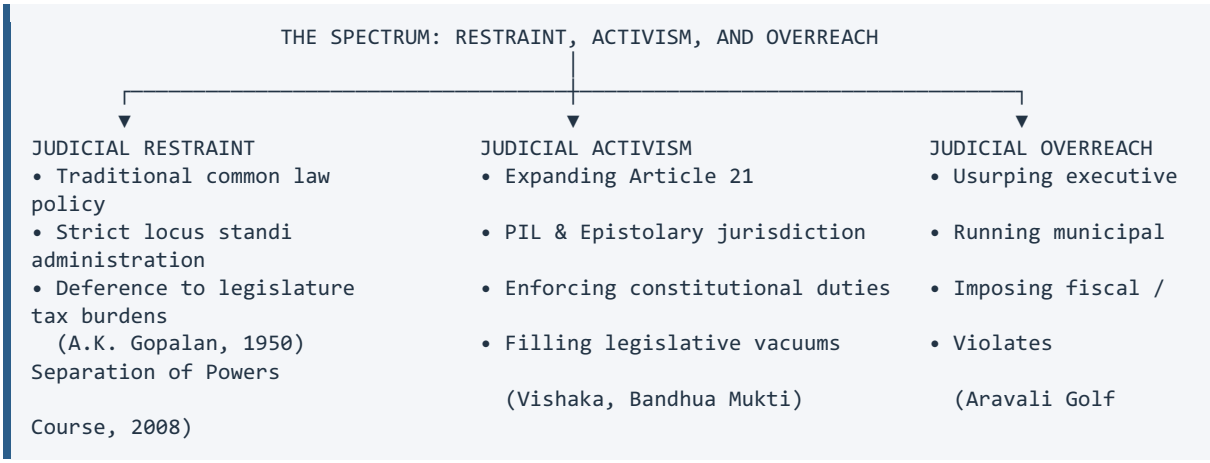
Question Addressed:

- *May 2025 (2024–25), Q.3:* Critically examine the concept of judicial activism in India. How does it differ from judicial overreach? Support your answer with relevant case laws. [25 Marks]
- *2022, Part B – Q.8:* Examine the doctrine of 'Separation of Powers' and its relevancy in modern constitutional governance. [10 Marks]

1. Introduction & The Paradigm of Judicial Activism

Judicial Activism refers to an active, dynamic, and assertive role played by constitutional courts in protecting fundamental rights, advancing social justice, and enforcing public duties when the executive and legislature fail to act.

Following the trauma of the Internal Emergency (1975–1977)—where the Supreme Court failed to protect civil liberties in ***ADM Jabalpur v. Shivkant Shukla***—the post-emergency judiciary embarked on an unprecedented mission of institutional redemption. Spearheaded by **Justices V.R. Krishna Iyer and P.N. Bhagwati**, the Supreme Court transformed itself from a traditional common-law court into a **"Court for the Poor and Downtrodden"**, creating the global phenomenon of **Public Interest Litigation (PIL)**.



2. The Mechanics of Judicial Activism in India

220. **Dismantling *Locus Standi* (Epistolary Jurisdiction):**

- The Court abandoned the traditional rule that only an aggrieved party whose personal legal right was infringed could approach the court.
- Any public-spirited citizen or NGO was permitted to file a writ petition on behalf of marginalized individuals who, by reason of poverty or disability, could not access justice (*S.P. Gupta*, 1981). Postcards, letters, and newspaper reports were treated as writ petitions.

221. **Transforming Article 21:**

- In ***Maneka Gandhi* (1978)**, the Court discarded the rigid textualism of *A.K. Gopalan*, holding that the procedure depriving life or liberty must be **"just, fair, and reasonable"**.
- Through progressive activism, the Court read into Article 21 the right to clean environment (*Subhash Kumar*), speedy trial (*Hussainara Khatoon*), privacy (*Puttaswamy*), legal aid (*M.H. Hoskot*), and education (*Mohini Jain*).

222. **Filling Legislative Vacuums:**

- In ***Vishaka v. State of Rajasthan* (1997)**, faced with an absolute statutory vacuum regarding workplace sexual harassment, the Supreme Court exercised powers under Article 32 read with CEDAW to lay down binding legal guidelines that operated as statutory law until the POSH Act was enacted 16 years later.
- In ***Common Cause v. Union of India* (2018)**, the Court legalized passive euthanasia and formulated rules for "Living Wills".

3. Judicial Activism vs. Judicial Overreach: The Boundary

While judicial activism is celebrated as a vital catalyst for human rights, **Judicial Overreach** occurs when the judiciary oversteps its constitutional mandate, usurps the functions of the legislature or executive, and breaches the core doctrine of the **Separation of Powers**:

Dimension	Judicial Activism (Legitimate)	Judicial Overreach (Illegitimate)
Constitutional Basis	Grounded in Articles 14, 21, 32, and 226 to enforce Fundamental Rights.	Enters unguided policy-making and executive administration without statutory anchor.

Institutional Trigger	Triggered by executive inaction, human rights atrocities, or legislative vacuum.	Impelled by judicial hubris, personal predilections, or desire to micro-manage governance.
Remedial Method	Issues continuing mandamus; directs authorities to perform statutory duties.	Creates administrative committees run by retired judges; directly allocates state budgets.
Separation of Powers	Harmonizes with constitutional checks and balances.	Completely shatters the constitutional equilibrium between the three organs.

4. Classic Case Studies of Judicial Overreach

223. ***Divisional Manager, Aravali Golf Course v. Chander Haas* (2008) 1 SCC 683:**

- The High Court directed the creation of permanent government posts for daily-wage workers.
- The Supreme Court overturned the order, issuing a scathing critique of judicial overreach:

> *"Judges must know their limits and not try to run the Government. They must have modesty and humility, and not behave like emperors... In the name of judicial activism, judges cannot cross their boundaries and usurp the functions of the Legislature or the Executive."* (Katju J.)

224. ***State of U.P. v. Jeet S. Bisht* (2007) 6 SCC 586:**

- Justice S.B. Sinha warned that the judiciary cannot issue writs of mandamus directing the legislature to enact a statute or compelling the executive to spend public funds in a specific manner.

225. **The National Highway Liquor Ban (2016):**

- The Supreme Court issued a blanket ban on the sale of liquor within 500 meters of national and state highways. While well-intentioned to prevent drunk driving, critics argued that regulating alcohol vending is a pure executive/legislative licensing policy that caused massive economic chaos and tax loss.

226. **Monitoring Delhi Air Pollution and Solid Waste:**

- Courts directing the odd-even car schemes, specifying smog tower installations, or managing garbage collection schedules turn constitutional judges into unelected municipal commissioners.

5. Separation of Powers in Modern Constitutional Governance

Unlike the rigid, water-tight separation in the US Constitution, the Indian Constitution incorporates a system of **functional separation with checks and balances** (*Ram Jawaya Kapur v. State of Punjab*, 1955).

- The Legislature enacts laws and holds the purse;
- The Executive implements policy and runs administration;
- The Judiciary interprets laws, protects rights, and prevents executive excess.

When the judiciary indulges in overreach, it undermines its own institutional legitimacy. Courts possess neither the **"power of the sword"** (police/military enforcement) nor the **"power of the**

purse" (budgetary allocation). Judicial orders that cannot be executed due to technical or financial impossibility invite public ridicule and erode judicial authority.

6. Conclusion

Judicial activism is the constitutional medicine for a malfunctioning executive; judicial overreach is a toxic overdose that destroys the constitutional patient. The Supreme Court must practice principled **judicial self-restraint**, intervening vigorously to protect the fundamental rights of the weak, while showing institutional deference to elected branches on complex economic and technical policy matters.

MASTER BLUEPRINT 3 (25 MARKS)

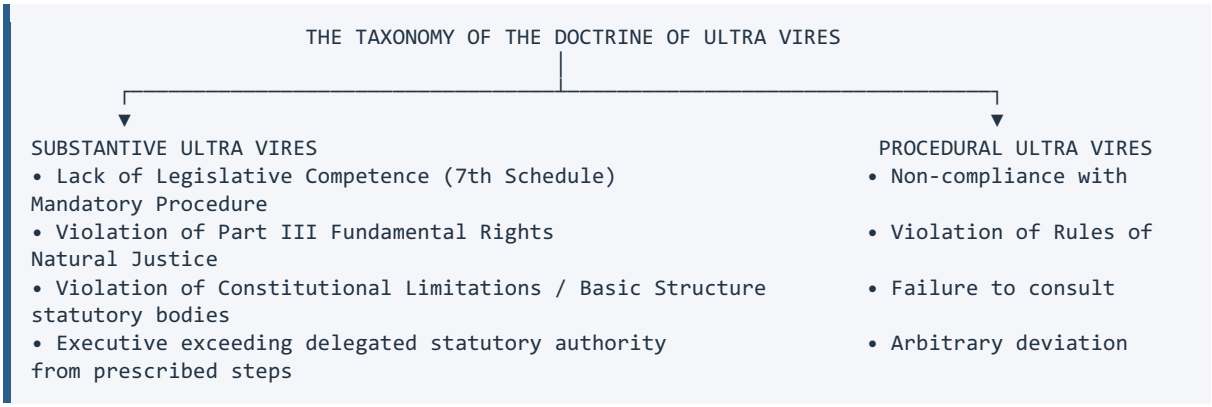
Question Addressed:

- *2019, Q.2:* Explain about doctrine of Ultravires as one of the grounds of judicial review with the help of case law. [25 Marks]

1. Introduction: The Conceptual Foundation of Ultra Vires

The Latin term ***Ultra Vires*** literally translates to *"beyond the powers"*. In administrative and constitutional law, the **Doctrine of Ultra Vires** is the ultimate structural foundation of **Judicial Review**.

In a constitutional democracy governed by the **Rule of Law**, no organ of the state—neither Parliament, nor the Executive, nor any statutory board—possesses absolute, sovereign omnipotence. Every public authority derives its power from a legal instrument: either the Constitution itself (the *grundnorm*) or an authorizing statute enacted by the Legislature. Whenever an authority acts beyond the boundaries of the power conferred upon it by law, its action is *ultra vires*, null, void, and of no legal effect (*Lord Greene in Associated Provincial Picture Houses v. Wednesbury Corporation*, 1948).



2. Substantive Ultra Vires

Substantive ultra vires occurs when the substance, subject-matter, or content of an enactment or executive rule exceeds legal competence:

227. **Lack of Legislative Competence:**

- Under Articles 245 and 246 read with the Seventh Schedule, Parliament and State Legislatures must confine their laws to their respective fields.

- If a State Legislature enacts a law trespassing substantially into List I (Union List), the law is substantively ultra vires and void under the Doctrine of Pith and Substance (*State of Bombay v. F.N. Balsara*, 1951).

228. **Violation of Fundamental Rights (Part III):**

- Under **Article 13(2)**, any legislative enactment or delegated administrative regulation that takes away or abridges Fundamental Rights is ultra vires.
- *Example:* In ***Shreya Singhal v. Union of India* (2015)**, Section 66A of the IT Act was declared substantively ultra vires Article 19(1)(a) due to vagueness and overbreadth.

229. **Violation of the Basic Structure:**

- Constitutional amendments that damage the basic features of the Constitution are ultra vires the amending power under Article 368 (*Kesavananda Bharati*, 1973; *Minerva Mills*, 1980; *NJAC Case*, 2016).

230. **Delegated Legislation Exceeding the Parent Act:**

- An executive rule, notification, or bye-law must strictly conform to the parent statute. If the executive frames a rule that expands, amends, or contradicts the parent statute, it is ultra vires.
- In ***Agricultural Market Committee v. Shalimar Chemical Works* (1997) 5 SCC 516**, the Supreme Court held that delegated legislation cannot create liabilities or expand definitions beyond what Parliament enacted in the parent Act.

3. Procedural Ultra Vires

Procedural ultra vires occurs when a public authority possesses the substantive power to act, but fails to observe the **mandatory procedural conditions** prescribed by the authorizing statute or constitutional law:

231. **Non-Compliance with Mandatory Statutory Procedure:**

- Where a statute requires that an order can only be passed after giving 30 days' notice, holding a public hearing, or obtaining prior environmental clearance, failure to comply renders the final order void.
- In ***Govindlal Chhaganlal Patel v. Agricultural Produce Market Committee* (AIR 1976 SC 263)**, the Court held that publication of a notification in a local Gujarati newspaper was a mandatory condition precedent; failure to publish rendered the market regulation procedurally ultra vires.

232. **Violation of the Rules of Natural Justice (*Audi Alteram Partem* & *Nemo Judex In Causa Sua*):**

- Natural justice is implicit in every statutory grant of power unless expressly excluded (*Maneka Gandhi*, 1978; *A.K. Kraipak v. Union of India*, 1969). Passing an adverse administrative or quasi-judicial order without giving a fair hearing renders the order procedurally ultra vires Article 14.

4. Modern Expansion: The Four Grounds of Judicial Review

In administrative law, the doctrine of ultra vires has been synthesized into the four modern grounds of judicial review articulated by Lord Diplock in the **GCHQ Case (*Council of Civil Service Unions v. Minister for the Civil Service*, 1985)** and adopted in India in ***Tata Cellular v. Union of India* (1994) 5 SCC 651**:

233. **Illegality:** The decision-maker must understand correctly the law that regulates their decision-making power and give effect to it.
234. **Irrationality (*Wednesbury* Unreasonableness):** A decision that is so outrageous in its defiance of logic or accepted moral standards that no sensible person could ever have arrived at it.
235. **Procedural Impropriety:** Failure to observe basic rules of natural justice or failure to act with procedural fairness.
236. **Proportionality:** The administrative measure must not be more drastic than is necessary to achieve the legitimate statutory objective (*Om Kumar v. Union of India*, 2001).

5. Conclusion

The Doctrine of Ultra Vires is the ultimate shield protecting the citizen from authoritarian state action. By continuously measuring executive and legislative actions against the yardstick of constitutional and statutory limits, the judiciary preserves the supremacy of the Constitution and guarantees that governance remains rooted in the Rule of Law.

PART 6: Critical Commentary, Contemporary Controversies & Reform Commission Recommendations

1. The Post-Retirement Appointments Controversy

A persistent controversy eroding public perception of judicial independence is the practice of the executive offering lucrative post-retirement appointments (e.g., Governors, Rajya Sabha nominations, tribunal chairmanships) to retiring judges:

- Critics argue that the expectation of post-retirement patronage creates a subconscious incentive for judges to favor the Union Government in sensitive political litigations.
- Former CJI R.M. Lodha and the Law Commission recommended a mandatory **two-year cooling-off period** before any retired higher court judge can accept government-nominated positions.

2. The Memorandum of Procedure (MoP) Standoff

Following the 2015 NJAC judgment, the Supreme Court directed the Union Government to finalize a revised **Memorandum of Procedure (MoP)** in consultation with the CJI to introduce transparency, eligibility criteria, and a secretariat to the Collegium:

- A decade later, the MoP remains stalled due to executive demands for a "national security" veto over judicial appointments, which the Collegium has resisted as a back-door revival of the NJAC.

3. Major Reform Commission Recommendations on Judicial Governance

REFORM PROPOSALS ON HIGHER JUDICIARY		
Commission / Committee	Key Recommendations	Status / Legislative Act
Law Commission 230th Report (2009)	• Increase retirement age of High Court judges to 65 • 1/3rd judges from outside	Proposed constitutional amendment bills lapsed
National Commission to Review the Working of the Constitution (NCRWC, 2002)	• Establish National Judicial Commission for appointments • Judicial Performance Comm.	Led to 99th Amendment / NJAC, struck down by SC in 2016

Judicial Standards and Accountability Bill (2012)	• Statutory code of conduct • Mechanism for citizen complaints against judges	Passed Lok Sabha in 2012; lapsed upon dissolution of House

237. **National Commission to Review the Working of the Constitution (NCRWC, 2002):**
    - Chaired by Justice M.N. Venkatachaliah, recommended creating a balanced National Judicial Commission that preserved judicial primacy while ensuring executive and public consultation.
238. **Judicial Standards and Accountability Bill (2012):**
    - Proposed a statutory framework to replace the cumbersome impeachment process under Article 124(4) with an independent complaints scrutiny committee, empowering the judiciary to impose minor penalties (such as stripping judicial work) for ethical violations short of corruption.
239. **Conclusion:** An independent, courageous, and accountable judiciary is the non-negotiable prerequisite of constitutional survival. As India confronts new authoritarian temptations, technological surveillance, and political polarization, the higher judiciary must remain true to its constitutional oath: *to do justice without fear or favour, affection or ill-will.*

Paper 2: Indian Constitutional Law – The New Challenges

Master Study Material: Theme 8

THEME 8: Election Commission, Electoral Reforms & Grass-Root Democracy

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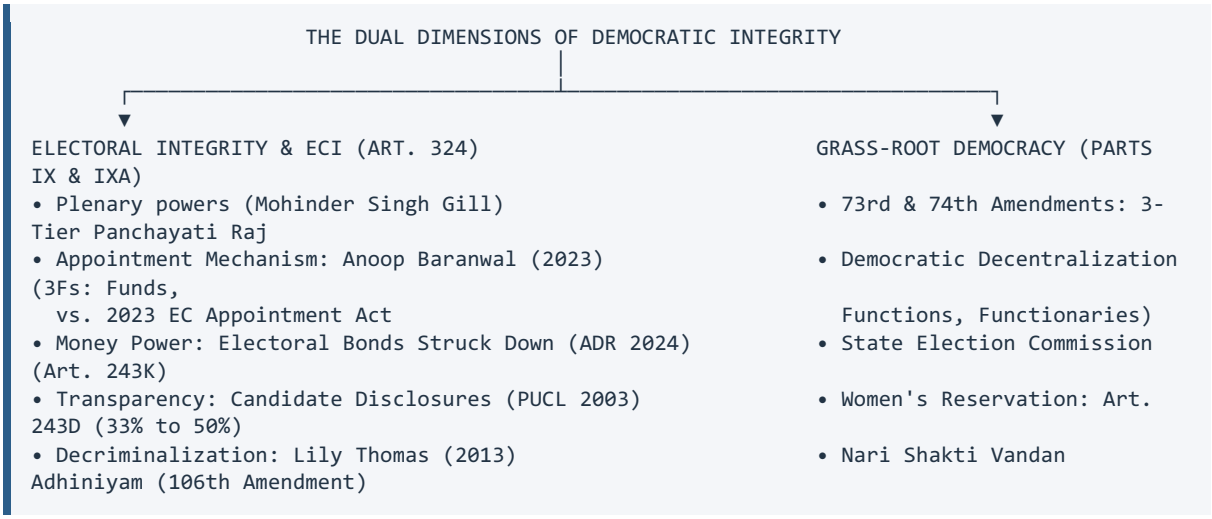
PART 1: Exhaustive Syllabus & Thematic Scope

Elections are the celebratory sacrament and structural life-support of constitutional democracy. In the words of the Supreme Court, **"Free and fair elections are the foundation of democratic governance, which is a Basic Feature of the Constitution."** The sovereign will of the people can be expressed meaningfully only when the electoral process is protected from the corrupting influence of illicit money, criminalization, state capture, and executive manipulation.

Theme 8 encompasses two interconnected constitutional dimensions:

240. **Vertical Electoral Integrity:** The role, independence, and evolution of the **Election Commission of India (ECI)** under Article 324, judicial breakthroughs in electoral reforms (the abolition of Electoral Bonds, NOTA, candidate disclosure, and anti-criminalization rules);

241. **Horizontal Grass-Root Democracy:** The constitutionalization of rural and urban local self-government through the **73rd and 74th Amendments**, and the revolutionary role of **political reservation for women** in dismantling patriarchal dominance from the village Panchayat to Parliament.



Detailed Syllabus Breakdown:

242. **The Constitutional Machinery of Elections: Article 324:**

- The mandate: Superintendence, direction, and control of the preparation of electoral rolls and conduct of all elections to Parliament, State Legislatures, and the offices of President and Vice-President.

- Plenary and Inherent Powers of ECI: *Mohinder Singh Gill v. Chief Election Commissioner* (1978) (Article 324 is a reservoir of plenary executive power operating in areas where statutory law is silent, subject to Rule of Law and Natural Justice).
- The Model Code of Conduct (MCC): Legal status, moral authority, and enforcement challenges.

243. **Independence and Composition of the Election Commission:**

- Multi-member Commission vs. Single Member: Evolution from single-member body to 3-member Commission (1989, 1993); *S.S. Dhanoa v. Union of India* (1991) and *T.N. Seshan, CEC v. Union of India* (1995) (holding CEC and Election Commissioners are equal in status and decision-making; majority vote governs).
- Tenure and Removal Safeguards: CEC can be removed only like a Supreme Court Judge (Art. 324(5) proviso); anomaly regarding Election Commissioners who can be removed on the mere recommendation of the CEC.
- The Landmark Breakthrough in *Anoop Baranwal v. Union of India* (2023) (5-Judge Constitution Bench): Declaring that an executive-monopolized appointment process destroys ECI independence; ordering that the Selection Committee must comprise the **Prime Minister, Leader of Opposition, and the Chief Justice of India**.
- The Legislative Counter-Move: The Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023 (substituting the CJI with a Union Cabinet Minister appointed by the PM; ongoing constitutional challenges).

244. **The Judicial Engine of Electoral Reforms:**

- Eradicating Secret Corporate Funding: *Association for Democratic Reforms (ADR) v. Union of India* (2024) (5-Judge Constitution Bench striking down the Electoral Bonds Scheme as unconstitutional, violating voters' right to know under Article 19(1)(a) and enabling corrupt corporate capture).
- The Citizen's Right to Know Candidates' Background: *Union of India v. ADR* (2002) and *PUCL v. Union of India* (2003) (mandatory disclosure of criminal cases, assets, and educational qualifications on affidavits).
- Negative Voting and Democratic Rejection: *PUCL v. Union of India* (2013) (directing introduction of the **"None of the Above" (NOTA)** option on Electronic Voting Machines).
- Immediate Disqualification of Convicted Legislators: *Lily Thomas v. Union of India* (2013) (striking down Section 8(4) of the Representation of the People Act, 1951; convicted MPs/MLAs disqualified immediately upon conviction of 2+ years).
- Decriminalizing Politics: *Public Interest Foundation* (2018) and *Rambabu Singh Thakur v. Sunil Arora* (2020) (mandatory publishing of criminal antecedents in national newspapers and social media with reasons why non-criminal candidates were not selected).
- Technological Integrity of Voting: *Subramanian Swamy v. ECI* (2013) (mandating Voter Verifiable Paper Audit Trail - VVPAT) and *ADR v. ECI* (2024) (upholding EVM-VVPAT integrity).

245. **Grass-Root Democracy: The 73rd and 74th Constitutional Amendments:**

- Conceptual origin: Mahatma Gandhi's vision of *Gram Swaraj* and Article 40 of DPSP (organization of village panchayats).

- Institutionalization: 73rd Amendment (1992 - Part IX, Articles 243 to 243O, 11th Schedule: 29 functional items) and 74th Amendment (1992 - Part IXA, Articles 243P to 243ZG, 12th Schedule: 18 municipal items).
- Structural Pillars: Three-tier Panchayati Raj system (Gram, Intermediate, District); Gram Sabha as the direct participatory democracy foundation; mandatory elections every 5 years; State Election Commission (Article 243K) and State Finance Commission (Article 243I).

246. **Political Reservation for Women as an Engine of Grass-Root Democracy:**

- Articles 243D(3) and 243T(3): Mandatory reservation of **not less than one-third (33%)** of all seats in Panchayats and Municipalities for women.
- Articles 243D(4) and 243T(4): Mandatory reservation of **not less than one-third of offices of Chairpersons** (Sarpanch, Mayor, Panchayat President) for women.
- State Variations: Over 20 Indian States (including Maharashtra, Bihar, Kerala, Rajasthan, Madhya Pradesh) expanding women's reservation to **50%**.
- Substantive Impact: Creation of over 1.45 million elected female representatives; higher investments in drinking water, sanitation, public health, and child education.
- Challenges: The "Sarpanch Pati" (husband/male relative acting as proxy leader) syndrome; social boycotts; and lack of administrative training.
- The National Leap: The **106th Constitutional Amendment Act, 2023 (*Nari Shakti Vandan Adhiniyam*)**—extending 33% reservation to the Lok Sabha and State Legislative Assemblies (Articles 330A, 332A, 239AA).

PART 2: Complete PYQ Question Bank (2015 – 2026)

> ⚠️ ***Note on Speculative Model Question:*** *The 2025–26 (Feb 2026) entry included below represents a forward-looking* ***speculative / model examination question*** *formulated on anticipated syllabus updates, rather than an archived historical sitting.*

All thirteen examination questions mapped to Theme 8 are reproduced below verbatim with their year, question number, and marks:

Year & Session	Question Identifier	Verbatim Examination Question Text	Prescribed Marks
Feb 2026 (2025–26) [Speculative / Model Projection]	Q.6	Elucidate the role of the Election Commission of India in electoral reforms. How has its functioning evolved to address the changing dynamics of Indian elections?	**25 Marks**
May 2025 (2024–25)	Q.5	Examine the role and functions of the Election Commission of India in the context of electoral reforms. How does its	**25 Marks**

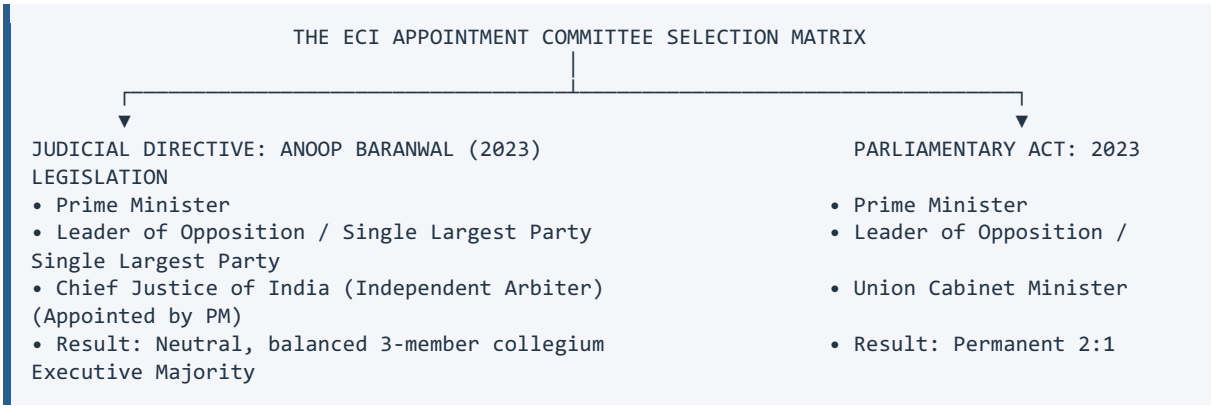
		independence contribute to free and fair elections?	
May 2025 (2024–25)	Q.7(b)	Panchayati Raj / पंचायत राज.	**12.5 Marks**
June 2024	Q.5	Discuss critically the role of Election Commission in Indian Democracy.	**25 Marks**
June 2024	Q.6(c)	Political Reservation to women is part of "Grass Root Democracy".	**12.5 Marks**
2023	Q.2	Discuss critically the role of Election Commission in Indian democracy.	**25 Marks**
2018 (Set A)	Q.2	Political Reservation to women is part of “Grass Root Democracy”.	**25 Marks**
2018 (Set A)	Q.6(b)	Electoral Reforms.	**12.5 Marks**
2018 (Set B)	Q.2	Political Reservation to women is part of “Grass Root Democracy”.	**25 Marks**
2018 (Set B)	Q.6(a)	Electoral Reforms.	**12.5 Marks**
2015 (Set A)	Q.2	Discuss critically the role of Election Commission in Indian Democracy.	**25 Marks**
2015 (Set A)	Q.5(a)	Political reservation to women is a part of 'Grass Root Democracy'.	**12.5 Marks**
2015 (Set A)	Q.5(b)	Electoral Reforms.	**12.5 Marks**

PART 3: Foundational Legal Framework & Constitutional Anatomy

1. Constitutional Anatomy of the Election Commission (Article 324)

- **Article 324(1):** Vests the superintendence, direction, and control of elections in an Election Commission.
- **Article 324(2):** Provides that the Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix.
- **Article 324(5) (Tenure and Independence Asymmetry):**

- The Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court (proved misbehaviour or incapacity via parliamentary impeachment under Article 124(4)).
- Any other Election Commissioner **cannot be removed from office except on the recommendation of the Chief Election Commissioner**. This statutory asymmetry has been criticized for creating hierarchy and executive vulnerability.



2. Constitutional Architecture of Grass-Root Democracy (Parts IX & IXA)

- **73rd Constitutional Amendment Act, 1992:**
  - *Article 243A (Gram Sabha):* A body consisting of all registered voters in a village; the primary organ of direct democracy.
  - *Article 243B (Three-Tier Structure):* Mandatory establishment of Panchayats at the Village, Intermediate (Block/Taluk), and District (Zilla) levels across all states with population above 20 lakhs.
  - *Article 243D (Reservations in Panchayats):*
    - Mandatory reservation for SCs and STs in proportion to their population;
    - Article 243D(3): **Not less than one-third of the total number of seats reserved for women**;
    - Article 243D(4): **Not less than one-third of the total number of offices of Chairpersons** of Panchayats reserved for women.
  - *Article 243E (Fixed 5-Year Tenure):* Mandatory elections before expiry of 5 years; if dissolved, elections must be held within 6 months.
  - *Article 243K (State Election Commission):* Independent constitutional authority for conducting local body elections.
  - *Article 243I (State Finance Commission):* Mandated every 5 years to review the financial position and recommend devolution of taxes and grants to Panchayats.
- **74th Constitutional Amendment Act, 1992 (Part IXA - Municipalities):**
  - Creates Nagar Panchayats, Municipal Councils, and Municipal Corporations; Article 243T mirrors Article 243D for women's reservation in urban local bodies.

PART 4: Landmark & Contemporary Case Law Matrix

Case Name & Citation	Bench Strength & Year	Core Constitutional Issue	Ratio Decidendi & Legal Principles	Verbatim / Key Observation	Application in Exams
Mohinder Singh Gill v. Chief Election Commr. (1978) 1 SCC 405	5 Judges (1978)	Cancellation of entire poll in Ferozepur parliamentary constituency; scope of ECI powers under Article 324.	Article 324 is a **plenary reservoir of executive power**. Where statutory law enacted by Parliament is silent, Article 324 operates to enable ECI to ensure free and fair elections, subject to Rule of Law and Natural Justice.	*"Article 324 is a plenary provision... The rule of law permeates our entire constitutional fabric. Even the Election Commission must act fairly and observe natural justice."* (Krishna Iyer J.)	The foundational locus classicus on the plenary scope of Article 324.
Union of India v. Association for Democratic Reforms (2002) 5 SCC 294	3 Judges (2002)	Disclosure of criminal antecedents, assets, liabilities, and educational qualifications by candidates.	The voter's **"Right to Know" is a Fundamental Right** under Article 19(1)(a). The ECI was directed to call for affidavits disclosing criminal records, assets, and education of all candidates.	*"For the survival of democracy, the voter must make an informed choice. Cast of vote is meaningless without knowing the character of the candidate."* (Shah J.)	Landmark precedent initiating candidate affidavits and combating criminalization.
People's Union for Civil Liberties (PUCL) v. UOI (2013) 10 SCC 1	3 Judges (2013)	Right of voters to reject all candidates on the ballot; introduction of NOTA (None of the Above).	Right to vote includes the **Right to Reject**. Directed ECI to provide the **"None of the Above" (NOTA)** button on EVMs. Negative voting compels political parties to field cleaner candidates.	*"Democracy is all about choice... Giving voters the option of NOTA fosters purity in elections and forces political parties to project good candidates."* (Sathasivam CJ)	Classic authority for voter rejection and electoral integrity.
Lily Thomas v. Union of India (2013) 7 SCC 653	2 Judges (2013)	Validity of Section 8(4) RPA 1951	**Section 8(4) RPA declared unconstitutional**.	*"The Constitution does not permit*	Groundbreaking ruling ending statutory

		allowing convicted MPs/MLAs to retain their seats by filing an appeal within 3 months.	Parliament lacks legislative competence to create a deferred disqualification for sitting members. Any MP/MLA convicted of 2+ years is disqualified **immediately**.	*any distinction between a person seeking election and a sitting member regarding disqualification. Section 8(4) is ultra vires Article 102 and 191."*	shelter for convicted criminal politicians.
Public Interest Foundation v. Union of India (2018) 10 SCC 1	5 Judges (2018)	Whether candidates against whom criminal charges are framed by courts can be barred from contesting elections.	Courts cannot add disqualifications outside Article 102/191 or RPA. However, directed mandatory publication of candidates' criminal antecedents in newspapers, TV, and party websites.	*"Criminalisation of politics is an anathema to the sanctity of democracy... We cannot enact law, but we command total transparency."* (Misra CJ)	Key ruling on the boundary between judicial reform and legislative disqualification.
Anoop Baranwal v. Union of India (2023) 6 SCC 161	5 Judges (2023)	Independence of ECI; executive monopoly over appointment of CEC and Election Commissioners under Art. 324(2).	An Election Commission dependent on the executive destroys democracy. Ruled that until Parliament enacts a law, appointments must be made on the advice of a **3-member Committee: PM, Leader of Opposition, and Chief Justice of India**.	*"The Election Commission must be fiercely independent... An agency that controls elections cannot be subservient to the party in power."* (Joseph J.)	Historic 5-Judge Constitution Bench milestone ending executive monopoly over ECI appointments.
Association for Democratic Reforms v. Union of India	5 Judges (2024)	Constitutional validity of Electoral Bonds Scheme, 2018 and amendments	**Electoral Bonds Scheme struck down unanimously as unconstitutional**. Anonymous	*"Information about funding of political parties is essential for voters to make*	Landmark contemporary ruling dismantling anonymous political

(2024) 5 SCC 1		to Finance Act, RPA, and Companies Act.	corporate funding violates the voter's Fundamental Right to Information under Article 19(1)(a) and promotes corporate-political quid pro quo.	*an informed choice... The Electoral Bond Scheme infringes upon Article 19(1)(a) and is manifestly arbitrary."* (Chandrachud CJ)	financing in India.
K. Krishna Murthy v. Union of India (2010) 7 SCC 202	5 Judges (2010)	Constitutional validity of reservations for SCs, STs, and OBCs in Panchayats and Municipalities under Arts. 243D & 243T.	Upheld reservations under 73rd and 74th Amendments. Political reservation in local bodies is an independent dimension of democratic empowerment, distinct from public employment quotas under Art. 16(4).	*"Panchayati Raj institutions are designed to transform grassroots governance... Political reservation gives voice to socially excluded communities, fulfilling participatory democracy."*	Foundational Constitution Bench authority upholding local body reservations.

PART 5: Master Examination Answer Blueprints

MASTER BLUEPRINT 1 (25 MARKS)

Questions Addressed:

- *Feb 2026 (2025–26) [Speculative / Model Projection], Q.6:* Elucidate the role of the Election Commission of India in electoral reforms. How has its functioning evolved to address the changing dynamics of Indian elections? [25 Marks]
- *May 2025 (2024–25), Q.5:* Examine the role and functions of the Election Commission of India in the context of electoral reforms. How does its independence contribute to free and fair elections? [25 Marks]
- *June 2024, Q.5 & 2023, Q.2 & 2015 (Set A), Q.2:* Discuss critically the role of Election Commission in Indian Democracy. [25 Marks]
- *2018 (Set A), Q.6(b) & 2018 (Set B), Q.6(a) & 2015 (Set A), Q.5(b):* Electoral Reforms. [12.5 Marks]

1. Introduction & The Constitutional Mandate

In a constitutional republic of 1.4 billion citizens and over 960 million registered electors, the **Election Commission of India (ECI)** occupies an unrivaled position of institutional stewardship. Created under **Article 324** of the Constitution, the ECI is an autonomous, permanent constitutional body tasked with the monumental responsibility of conducting free, fair, and credible elections to Parliament, State Legislatures, and the Presidency.

As the Supreme Court observed in ***Indira Nehru Gandhi v. Raj Narain* (1975)**, **free and fair elections are an integral part of the Basic Structure** of the Constitution. Without a fiercely independent, non-partisan electoral umpire, democracy degenerates into authoritarian majoritarianism.

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                         THE EVOLUTIONARY CYCLE OF ELECTORAL REFORMS
                                          │
        ┌─────────────────────────────────┼─────────────────────────────────┐
        │                                 │                                 │
INSTITUTIONAL INDEPENDENCE            TRANSPARENCY & FUNDING              CRIMINALIZATION
CHECKS
• Multi-member body (T.N. Seshan)     • Disclosure Affidavits (ADR, 2002)   • Immediate
disqualification on
• Plenary reservoir (Mohinder Gill)   • Electoral Bonds unconstitutional      conviction:
Lily Thomas (2013)
• Collegium Appointment Model           (ADR, 2024)                         • NOTA Option:
PUCL (2013)
  (Anoop Baranwal, 2023)              • VVPAT paper trail (Swamy, 2013)     • Criminal
publishing (Rambabu, 2020)
```

2. The Plenary Reservoir of Power under Article 324

The true constitutional muscle of the ECI was unraveled by the 5-Judge Constitution Bench in ***Mohinder Singh Gill v. Chief Election Commissioner* (1978) 1 SCC 405**:

- The Court held that the phrase *"superintendence, direction, and control"* in Article 324 is a **plenary reservoir of executive power**.
- While Parliament is empowered under Articles 327 to make laws governing elections (Representation of the People Acts, 1950 & 1951), where statutory law is silent or unforeseen emergencies arise during polling, **Article 324 operates as an independent constitutional reserve**, empowering the Commission to issue binding directions, cancel polls, or order re-polls to secure electoral purity.
- *Constraint:* The Court emphasized that this power is not unbridled tyranny; it is subject to the **Rule of Law and the principles of Natural Justice**.

3. The Judicial Architecture of Electoral Reforms

Over the past two decades, the Supreme Court, acting in tandem with the ECI and civil society, has revolutionized Indian electoral law:

247. **Dismantling Anonymous Political Financing (*Electoral Bonds Judgment*, 2024):**
    - In ***Association for Democratic Reforms (ADR) v. Union of India* (2024) 5 SCC 1**, a unanimous 5-Judge Constitution Bench headed by Chief Justice D.Y. Chandrachud struck down the **Electoral Bonds Scheme, 2018** as unconstitutional.
    - The Court held that anonymous donations violate the voter's Fundamental Right to Information under **Article 19(1)(a)**. Unlimited, secret corporate donations facilitate

corruption, policy capture, and quid pro quo arrangements, violating the core principle of free and fair elections.

248. **Ending Protection for Criminal Legislators (*Lily Thomas*, 2013):**

- For over six decades, Section 8(4) of the RPA 1951 allowed sitting MPs and MLAs convicted of heinous crimes to escape disqualification simply by filing an appeal within 3 months.
- The Court declared Section 8(4) unconstitutional, establishing that **any sitting legislator convicted and sentenced to 2 or more years of imprisonment is disqualified immediately**.

249. **Candidate Affidavits and the Right to Know (*ADR 2002 & PUCL 2003*):**

- The Court mandated that every candidate must file a sworn affidavit disclosing their criminal antecedents, assets, liabilities, and educational qualifications, giving substance to the voter's right to make an informed choice.

250. **Voter Rejection through NOTA (*PUCL*, 2013):**

- The Supreme Court directed the inclusion of the **"None of the Above" (NOTA)** button on EVMs, recognizing that the negative right of rejection is an essential facet of freedom of speech under Article 19(1)(a).

251. **EVM-VVPAT Integrity (*ADR v. ECI*, 2024):**

- The Court upheld the technological robustness of Electronic Voting Machines, rejecting demands to return to paper ballots while enforcing stringent VVPAT audit trail mechanisms across constituencies.

4. The Continuing Struggle for ECI Independence

The structural vulnerability of the ECI has always been the method of its appointment:

- Under **Article 324(2)**, the President appoints the CEC and Election Commissioners *"subject to the provisions of any law made by Parliament"*. For 73 years, Parliament failed to enact such a law, leaving appointments entirely to the unilateral discretion of the ruling Union Executive.
- In ***Anoop Baranwal v. Union of India* (2023) 6 SCC 161**, the 5-Judge Constitution Bench stepped in to end executive capture. The Court held that an Election Commission beholden to the executive destroys democracy, directing that appointments must be made on the advice of a **3-member Committee: the Prime Minister, the Leader of the Opposition, and the Chief Justice of India**.
- *The Legislative Counter-Strike:* In December 2023, Parliament enacted the **Chief Election Commissioner and other Election Commissioners Act, 2023**, deliberately removing the CJI and substituting him with a Union Cabinet Minister chosen by the Prime Minister. This restored a permanent 2:1 majority to the ruling executive, which is currently under constitutional challenge before the Supreme Court.

5. Conclusion & The Reform Agenda

The Election Commission of India has demonstrated remarkable administrative competence in conducting the world's largest democratic exercises. However, to preserve public trust in an era of intense political polarization:

252. The **appointment committee must be restored to a truly independent tripartite panel** insulated from ruling party dominance;

253. Election Commissioners must be granted the same constitutional removal protection under Article 324(5) as the CEC;

254. The Model Code of Conduct (MCC) should be given statutory backing with swift penal sanctions for hate speech and communal appeals during campaigns.

MASTER BLUEPRINT 2 (25 MARKS)

Questions Addressed:

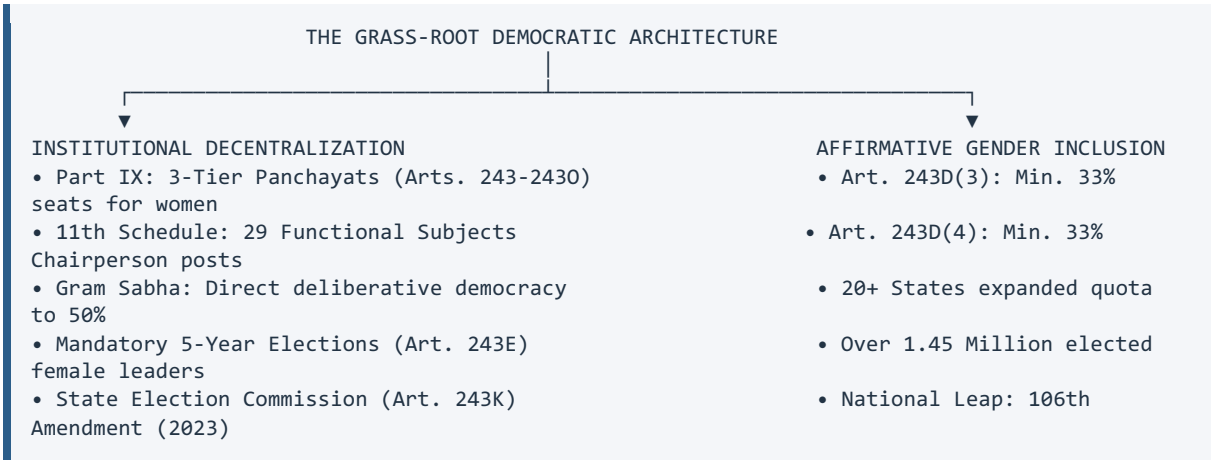
- *June 2024, Q.6(c) & 2018 (Set A), Q.2 & 2018 (Set B), Q.2 & 2015 (Set A), Q.5(a):* Political Reservation to women is part of "Grass Root Democracy". [25 Marks / 12.5 Marks]
- *May 2025 (2024–25), Q.7(b):* Panchayati Raj / पंचायत राज. [12.5 Marks]

1. Introduction: Decentralization and Inclusive Democracy

True democracy cannot be realized through quinquennial elections to a distant Parliament in New Delhi or State Assemblies in state capitals. Real democratic power must reside where citizens live, work, and struggle—at the **grassroots level of the village and the municipality**.

While **Article 40** of the Directive Principles of State Policy urged the State to organize village panchayats, local self-government remained an underfunded, ad-hoc state subject for four decades. The historic **73rd and 74th Constitutional Amendment Acts, 1992** revolutionized the Indian constitutional landscape by creating a constitutionally entrenched **Three-Tier Panchayati Raj Architecture** (Part IX and Part IXA).

The centerpiece of this constitutional revolution was the mandatory provision of **Political Reservation for Women**, transforming grassroots democracy from a feudal, patriarchal oligarchy into an engine of female leadership and substantive social equality.



2. Constitutional Machinery of Panchayati Raj (73rd Amendment)

255. **The Three-Tier Model (Article 243B):**

- *Gram Panchayat:* At the village level;
- *Panchayat Samiti:* At the intermediate/block level;
- *Zilla Parishad:* At the district level.

256. **The Sovereign Deliberative Forum: Gram Sabha (Article 243A):**

- Comprises all registered voters in the village. It is the direct democracy equivalent of the ancient Greek *ecclesia*, approving village budgets, monitoring social audits, and identifying beneficiaries for welfare schemes.

257. **The Three Fs: Functions, Finances, and Functionaries:**
    - *Functions:* The **11th Schedule** lists 29 subjects transferred to Panchayats, including agriculture, rural housing, drinking water, roads, poverty alleviation, and primary education.
    - *Finances:* Independent **State Finance Commissions (Article 243I)** review and recommend statutory tax devolution and grants-in-aid to eliminate financial starvation.
    - *Functionaries:* Independent **State Election Commissions (Article 243K)** guarantee that local elections cannot be indefinitely postponed by state governments.

3. Political Reservation for Women: Constitutional Blueprint

- **Article 243D(3):** Mandates that **not less than one-third (including the number of seats reserved for SC/ST women) of the total number of seats** to be filled by direct election in every Panchayat shall be reserved for women and allocated by rotation to different constituencies.
- **Article 243D(4):** Extends this mandate to executive leadership, providing that **not less than one-third of the total number of offices of Chairpersons** of Panchayats at each level shall be reserved for women.
- **The 50% Expansion:** Recognizing the success of this measure, over 20 Indian States—including Maharashtra, Bihar, Madhya Pradesh, Kerala, Tamil Nadu, and Rajasthan—have enacted state legislation expanding women's reservation in local bodies to **50%**.

4. Transformative Impact on Grass-Root Democracy

Political reservation for women in local governance has achieved what centuries of social reform could not:

258. **Creation of Mass Leadership:** India today has the largest contingent of elected female representatives in human history—over **1.45 million women** holding political office across Panchayats and Municipalities.
259. **Prioritization of Core Social Infrastructure:** Comprehensive empirical research (including Nobel laureate Esther Duflo's field studies) reveals that female-led Panchayats invest significantly more resources in clean drinking water, sanitation facilities, primary healthcare centers, school quality, and child immunization compared to male-led counterparts.
260. **Dismantling Patriarchal Hegemony:** In rural regions where women were historically confined behind purdah, political reservation forced traditional village elders and caste hierarchies to accept female authority in public Gram Sabha meetings.
261. **Reduction in Crime & Reporting of Domestic Violence:** Visible female leadership in local government increases female reporting of domestic crimes and builds confidence in local police administration.

5. Systemic Hurdles and The Path Ahead

- **The "Sarpanch Pati" (Pati Panchayat) Phenomenon:** In many conservative pockets, male relatives (husbands, fathers-in-law) attempt to conduct official meetings, sign documents, and wield real power while the elected woman remains a figurehead.
    - *Remedy:* Strict state government circulars barring male relatives from attending official meetings, combined with comprehensive leadership, budget literacy, and administrative training for women Sarpanches.

- **Incomplete Devolution of Powers:** Many State Governments remain reluctant to devolve true administrative and financial autonomy (the 3Fs) to local bodies, reducing Panchayats to mere executing agencies of state schemes.
- **The National Culmination: The 106th Amendment Act, 2023:**
  - The historic success of women in grassroots democracy served as the indisputable moral and constitutional justification for passing the **106th Constitutional Amendment Act, 2023 (*Nari Shakti Vandan Adhiniyam*)**, reserving **33% of seats in the Lok Sabha and State Legislative Assemblies for women**.

6. Conclusion

Political reservation for women in Panchayati Raj is not a token welfare gesture; it is the democratic revolution of modern India. By anchoring political power in the hands of women at the grassroots, the Constitution has breathed life into Dr. B.R. Ambedkar's vision: that political democracy must transform into a true social and economic democracy.

PART 6: Critical Commentary, Contemporary Controversies & Reform Commission Recommendations

1. The Controversy over EVMs vs. VVPAT Audit Verification

The integrity of Electronic Voting Machines (EVMs) has been a constant source of political litigation:

- In ***Association for Democratic Reforms v. Election Commission of India* (2024 INSC 332)**, the Supreme Court rejected demands for 100% cross-verification of EVM votes with VVPAT slips or returning to paper ballots, holding that EVMs are stand-alone, unhackable machines.
- However, the Court introduced two vital safeguards: (1) Sealing and storing of Symbol Loading Units (SLU) in strongrooms for 45 days post-results; and (2) Enabling the 2nd and 3rd placed candidates to seek physical verification of burnt memory in 5% of EVMs per assembly segment.

2. The Weaponization of the Criminal Disqualification Void

While *Lily Thomas* disqualified convicted legislators, candidates charged with heinous offences (murder, rape, extortion) continue to contest elections because criminal trials in India drag on for decades:

- The Supreme Court in ***Rambabu Singh Thakur* (2020)** expressed deep anguish that political parties prioritize "winnability" over probity, failing to give any valid reason why candidates with severe criminal charges were selected.
- The Law Commission and ECI have consistently recommended that **framing of charges by a court of law for offences punishable with 5+ years should operate as an automatic disqualification**.

3. Major Reform Commission Recommendations on Elections and Panchayats

REFORM PROPOSALS ON ELECTIONS & PANCHAYATS		
Commission / Report	Key Recommendations	Status / Legislative Act
Dinesh Goswami Committee on Electoral Reforms (1990)	• Statutory Model Code of Conduct; EVMs authorization	Partially adopted; MCC remains non-statutory

Law Commission 255th Report on Electoral Reforms (2015)	• State funding of elections; • Ban on anonymous corporate trusts and electoral bonds	Stood vindicated by ADR (2024) striking down Electoral Bonds
Second Administrative Reforms Commission (2nd ARC - 2007)	• Empower Gram Sabha as watchdog; active devolution of Funds, Functions, Staff	Model Panchayat acts circulated to States

262. **Law Commission 255th Report on Electoral Reforms (2015):**
- Strongly urged total transparency in political party financing, recommending a ceiling on corporate donations and criminalizing paid news.
- Recommended that the appointment of Election Commissioners be carried out by a neutral collegium (the precursor to the *Anoop Baranwal* judgment).

263. **Second Administrative Reforms Commission (6th Report - Local Governance):**
- Recommended clear statutory division of responsibilities (Activity Mapping) between Village, Block, and District Panchayats to prevent bureaucratic overlap.
- Recommended setting up an Ombudsman for local governments to investigate corruption allegations against local elected representatives without political interference.

264. **Conclusion:** Free and fair elections and vibrant local democracy are the twin lungs of the Indian Republic. Protecting the independence of the Election Commission and empowering women at the grassroots are not optional constitutional luxuries—they are the indispensable guarantees that sovereign power remains forever rooted in the people of India.

Paper 2: Indian Constitutional Law – The New Challenges

Master Study Material: Theme 9

THEME 9: Fundamental Rights, Directive Principles, Preventive Detention & Separation of Powers

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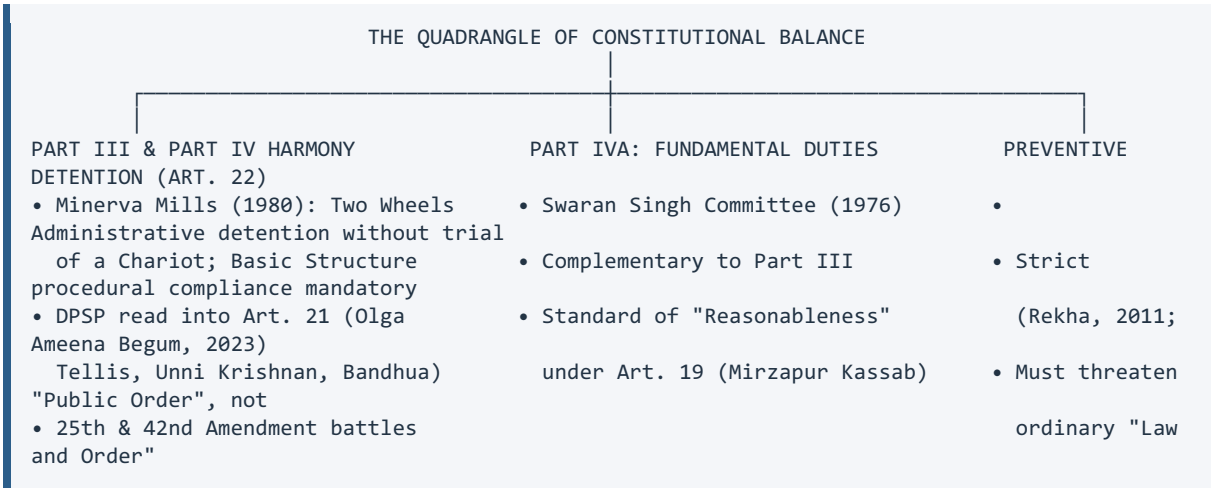
PART 1: Exhaustive Syllabus & Thematic Scope

Theme 9 integrates four foundational pillars that define the operational balance of the Indian Constitutional Republic:

265. **The Dynamic Harmony between Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV):** The conceptual voyage from initial judicial subordination (*Champakam Dorairajan*) to constitutional conflict, basic structure synthesis (*Minerva Mills*), and modern transformative integration (reading DPSPs into Article 21);
266. **Fundamental Rights and Fundamental Duties (Part IVA - Article 51A):** The reciprocal and complementary relationship between individual liberties and civic obligations;
267. **Preventive Detention and Constitutional Safeguards (Article 22):** The constitutional parameters of administrative detention without trial, the tension between state security and personal liberty, and the strict judicial enforcement of procedural safeguards (*A.K. Gopalan* to *Maneka Gandhi* to *Ameena Begum* 2023);
268. **The Doctrine of Separation of Powers:** The flexible, functional system of checks and balances governing the relationship between the Legislature, Executive, and Judiciary in India.



Detailed Syllabus Breakdown:

269. **The Dialectic of Fundamental Rights and Directive Principles:**
    - The ideological distinction: Part III as negative civil and political rights (justiciable under Articles 32 and 226); Part IV as positive socioeconomic aspirations (declared non-enforceable by courts under Article 37, yet *"fundamental in the governance of the country"*).

- Phase I: Judicial Subordination of DPSPs (*State of Madras v. Champakam Dorairajan*, 1951 - Directive Principles must run as subsidiary to Fundamental Rights).
- Phase II: Harmonious Construction (*In Re Kerala Education Bill*, 1958; *Chandra Bhavan Boarding*, 1970).
- Phase III: Legislative Supremacy and Constitutional Clashes (25th Amendment Act, 1971 inserting Article 31C; 42nd Amendment Act, 1976 giving blanket primacy to all DPSPs over Articles 14 and 19).
- Phase IV: The Basic Structure Synthesis (*Kesavananda Bharati*, 1973; *Minerva Mills v. Union of India*, 1980 - Indian Constitution is founded on the bedrock of the balance between Part III and Part IV; absolute primacy to either destroys the Basic Structure).
- Phase V: Integrated Judicial Realization: Reading DPSPs into Fundamental Rights (*Bandhua Mukti Morcha*, *Olga Tellis*, *Unni Krishnan*, *Consumer Education and Research Centre*).

270. **Fundamental Rights and Fundamental Duties (Part IVA):**

- Incorporation of Article 51A via the 42nd Constitutional Amendment Act, 1976 on the recommendations of the **Justice Swaran Singh Committee**; addition of Article 51A(k) via the 86th Amendment Act, 2002.
- Non-justiciability vs. Interpretative Efficacy: Fundamental Duties as constitutional compasses to interpret ambiguous statutes and determine the "reasonableness" of restrictions under Article 19 (*AIIMS Students' Union v. AIIMS*, 2002; *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*, 2005 - 7 Judges).

271. **Preventive Detention and Article 22 Safeguards:**

- Definition: Preventive detention as detention of a person without trial and conviction by a court, ordered on the executive's subjective satisfaction to prevent future prejudicial activity.
- Constitutional Anatomy of Article 22:
  - Articles 22(1) & 22(2): Safeguards in ordinary arrests (grounds of arrest, legal representation, 24-hour magistrate production).
  - Article 22(3): **The Great Exception**—Clauses (1) and (2) do not apply to enemy aliens or persons detained under preventive detention laws.
  - Articles 22(4) to 22(7): Mandatory safeguards in preventive detention:
    272. Advisory Board review for detention beyond 3 months;
    273. Mandatory communication of grounds of detention "as soon as may be";
    274. Earliest opportunity of making a representation against the detention order (Article 22(5));
    275. Privilege against disclosing facts contrary to public interest (Article 22(6)).
- Judicial Evolution:
  - The formalistic era: *A.K. Gopalan v. State of Madras* (1950);
  - The constitutional catastrophe: *ADM Jabalpur v. Shivkant Shukla* (1976);
  - The post-Maneka paradigm: *Maneka Gandhi* (1978) (substantive due process applied to Art. 22);
  - The modern jurisprudence of strict scrutiny: *Rekha v. State of Tamil Nadu* (2011) and *Ameena Begum v. State of Telangana* (2023) (preventive detention is a draconian

power; failure to strictly adhere to procedure invalidates detention; cannot substitute ordinary criminal process).

276. **The Doctrine of Separation of Powers in India:**

- Montesquieu's classical model vs. Indian functional reality: A system of **broad separation of functions accompanied by checks and balances**, not water-tight institutional compartments (*Ram Jawaya Kapur*, 1955; *Indira Nehru Gandhi*, 1975).
- Judicial Review as a constitutional check; Judicial Overreach as an impermissible breach of separation of powers.

PART 2: Complete PYQ Question Bank (2015 – 2026)

> ⚠️ ***Note on Speculative Model Question:*** *The 2025–26 (Feb 2026) entry included below represents a forward-looking* ***speculative / model examination question*** *formulated on anticipated syllabus updates, rather than an archived historical sitting.*

All six examination questions mapped to Theme 9 are reproduced below verbatim with their year, question number, and marks:

Year & Session	Question Identifier	Verbatim Examination Question Text	Prescribed Marks
Feb 2026 (2025–26) [Speculative / Model Projection]	Q.7(a)	Fundamental Rights v. Directive Principles of State Policy.	**12.5 Marks**
2022	Part B – Q.2	"Directive Principles of State Policy are not enforceable in the Court of Law but, nevertheless, they are fundamental in the governance of the country." Discuss with leading cases.	**10 Marks**
2022	Part B – Q.4	'Fundamental Rights and Fundamental Duties are supplementary and complementary to each other.' Discuss with judicial trends.	**10 Marks**
2018 (Set A)	Q.4	Preventive Detention cannot be ordered by the executives without authority of law and conformity with the procedure established by law. Discuss.	**25 Marks**

2018 (Set B)	Q.4	Preventive Detention cannot be ordered by the executives without authority of law and conformity with the procedure established by law. Discuss.	**25 Marks**
2015 (Set B)	Q.3(b)	Separation of powers in Indian Constitution.	**12.5 Marks**

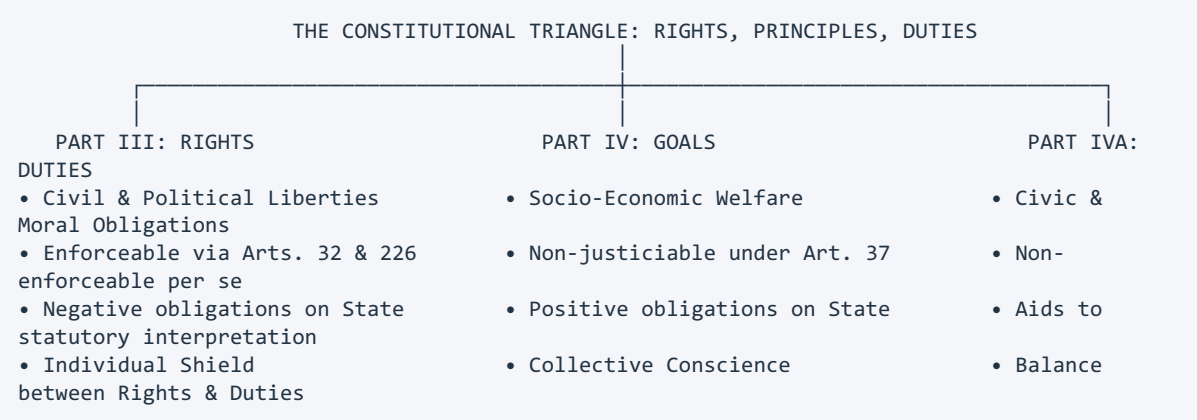
PART 3: Foundational Legal Framework & Constitutional Anatomy

1. Constitutional Text: Parts III, IV, and IVA

- **Article 37 (The Non-Enforceability & Primacy Paradox):**

> *"The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws."*

  - Emphasizes that DPSPs are **politically and moralistically binding** on the State, establishing the framework for a Socialist Welfare State (Articles 38, 39, 39A, 41, 42, 43, 44, 45, 47, 48A).
- **Article 31C (The Shield Clause):**
  - Inserted by the 25th Amendment Act, 1971: Saves laws giving effect to the Directive Principles specified in **Article 39(b) and 39(c)** (distribution of material resources and prevention of concentration of wealth) from challenge under Articles 14 and 19.
  - The second part of Art. 31C (barring judicial review by declaring that no court shall question whether a law gives effect to such policy) was struck down in *Kesavananda Bharati* (1973).
  - The 42nd Amendment's attempt to expand Art. 31C to protect *all* Directive Principles was struck down in *Minerva Mills* (1980).
- **Article 51A (Fundamental Duties):**
  - Contains 11 civic and moral obligations (e.g., upholding sovereignty and integrity, defending the country, promoting harmony transcending religious diversities, renouncing practices derogatory to the dignity of women, safeguarding public property, and developing scientific temper).



2. Constitutional Anatomy of Preventive Detention: Article 22

- **Article 22(4):** No law providing for preventive detention shall authorize detention for a period longer than **three months**, unless an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as Judges of a High Court has reported before the expiration of the three months that there is in its opinion sufficient cause for such detention.
- **Article 22(5) (Dual Constitutional Guarantees):**
  277. The authority making the order shall, **as soon as may be, communicate to such person the grounds on which the order has been made**;
  278. The authority shall **afford him the earliest opportunity of making a representation against the order**.
- **Article 22(6) (State Privilege):** The authority is not required to disclose facts which such authority considers to be against the public interest to disclose.
- **Article 22(7):** Authorizes Parliament to prescribe the maximum period of detention and the procedure to be followed by an Advisory Board.

PART 4: Landmark & Contemporary Case Law Matrix

Case Name & Citation	Bench Strength & Year	Core Constitutional Issue	Ratio Decidendi & Legal Principles	Verbatim / Key Observation	Application in Exams
State of Madras v. Champakam Dorairajan AIR 1951 SC 226	7 Judges (1951)	Conflict between communal GO reservation in medical colleges (DPSP Art. 46) and fundamental right (Art. 29(2)).	Directive Principles are unenforceable under Art. 37 and **must run as subsidiary to Fundamental Rights**. Part III is sacrosanct and cannot be overridden by DPSP.	*"The Directive Principles of State Policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights."* (Das J.)	Historic baseline of Phase I (Subordination of DPSP to Fundamental Rights). Led to 1st Amendment.
Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225	13 Judges (1973)	Validity of Article 31C; relationship between Part III and Part IV; Basic Structure.	Part III and Part IV are complementary and supplementary. They form the **"conscience of the Constitution"**. Upheld the first part of Art. 31C protecting laws	*"Fundamental Rights and Directive Principles are meant to supplement each other. Together they form the core of the commitment to social*	Grounded the harmonious relationship between Part III and Part IV in the Basic Structure.

			furthering Art. 39(b) and (c).	*revolution."* (Mathew J.)	
Minerva Mills v. Union of India (1980) 3 SCC 625	5 Judges (1980)	Constitutional validity of Section 4 of 42nd Amendment giving absolute supremacy to all DPSPs over Arts. 14 & 19.	Section 4 of 42nd Amendment struck down. **The harmony and balance between Fundamental Rights and Directive Principles is an essential feature of the Basic Structure**.	*"To give absolute primacy to one over the other is to tilt the constitutional harmony... Part III and Part IV together constitute the core of our Constitution. They are like two wheels of a chariot."* (Chandrachud CJ)	Supreme locus classicus on the unalterable constitutional balance between Parts III and IV.
Olga Tellis v. Bombay Municipal Corporation (1985) 3 SCC 545	5 Judges (1985)	Eviction of pavement dwellers in Bombay; reading Article 39(a) and 41 (Right to Livelihood) into Article 21.	Right to Life under Article 21 includes the **Right to Livelihood**. Directive Principles in Articles 39(a) and 41 must be read into Article 21 to give life and meaning to fundamental rights.	*"If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his life would be to deprive him of his means of livelihood."* (Chandrachud CJ)	The master precedent demonstrating the modern integration of Part IV into Part III.
State of Gujarat v. Mirzapur Moti Kureshi Kassab (2005) 8 SCC 534	7 Judges (2005)	Validity of total ban on slaughter of cows and progeny under Art. 19(1)(g) read with Arts. 48 and 51A(g).	**Fundamental Duties under Article 51A must be used to interpret Fundamental Rights** and determine the "reasonableness" of restrictions under Article 19. Total ban upheld.	*"Fundamental Duties are not mere pious wishes... In determining the reasonableness of a restriction under Article 19, the Court must have regard to the Directive Principles and Fundamental Duties."* (Lahoti CJ)	7-Judge Bench authority establishing the constitutional enforceability of Fundamental Duties.

A.K. Gopalan v. State of Madras AIR 1950 SC 27	6 Judges (1950)	Preventive detention under Preventive Detention Act, 1950; whether Article 21 & 22 are subject to Article 19.	Adopted a formalistic, water-tight interpretation: Articles 19, 21, and 22 are mutually exclusive. "Procedure established by law" means any enacted state legislation, regardless of fairness.	*"Procedure established by law means procedure prescribed by the law of the State... It cannot be tested on natural justice or due process."* (Kania CJ)	Classical starting point of preventive detention; later completely dismantled and overruled by *Maneka Gandhi*.
ADM Jabalpur v. Shivkant Shukla (Habeas Corpus Case) (1976) 2 SCC 521	5 Judges (1976)	Maintainability of habeas corpus petitions challenging illegal preventive detention during Emergency under Art. 359.	By 4:1 majority, held that during Presidential Emergency, no person has locus standi to approach the court for a writ of habeas corpus to enforce personal liberty. (Justice H.R. Khanna dissented).	*"In view of the Presidential Order, no person has any locus standi to move any writ petition under Article 226 for habeas corpus."* (Ray CJ) — *Overruled in Puttaswamy (2017).*	The dark nadir of Indian preventive detention jurisprudence; Justice Khanna's dissent was later vindicated.
Rekha v. State of Tamil Nadu (2011) 5 SCC 244	2 Judges (2011)	Detention under Goondas Act for selling spurious medicines; whether ordinary criminal law should be invoked first.	Preventive detention is an **extraordinary, draconian power**. Where ordinary criminal law is sufficient to deal with an offence, resort to preventive detention is illegal and unconstitutional. Strict procedural compliance is mandatory.	*"Preventive detention is an exceptional measure... Personal liberty protected under Article 21 is so sacrosanct that procedural safeguards in Article 22 must be strictly and zealously enforced."* (Katju J.)	Master modern authority establishing that preventive detention cannot substitute ordinary criminal trials.
Ameena Begum v. State of Telangana (2023) 9 SCC 587	2 Judges (2023)	Preventive detention of an alleged habitual cheat under Telangana	Detention quashed. Preventive detention cannot be invoked for ordinary law and	*"The power of preventive detention cannot be exercised routinely to*	Leading contemporary precedent enforcing strict public-order thresholds and

		Goondas Act; "Public Order" vs. "Law and Order".	order violations or property cheating cases. There must be an **imminent, grave threat to the general public order**. Procedural lapses violate Article 21.	*curb ordinary crimes. The breach must affect the community at large, disturbing the tempo of life."* (Bhardwaj J.)	procedural rigor.

PART 5: Master Examination Answer Blueprints

MASTER BLUEPRINT 1 (12.5 / 25 MARKS)

Questions Addressed:

- *Feb 2026 (2025–26) [Speculative / Model Projection], Q.7(a):* Fundamental Rights v. Directive Principles of State Policy. [12.5 Marks]
- *2022, Part B – Q.2:* "Directive Principles of State Policy are not enforceable in the Court of Law but, nevertheless, they are fundamental in the governance of the country." Discuss with leading cases. [10 Marks]

1. Introduction: The Two Halves of the Constitutional Conscience

Granville Austin famously described **Part III (Fundamental Rights)** and **Part IV (Directive Principles of State Policy)** as the *"conscience of the Indian Constitution"*. Together, they embody the core commitment to social revolution.

However, their structural design generated an inherent constitutional dialectic:

- **Part III:** Negative, justiciable civil and political rights (Articles 12–35) enforceable directly through the extraordinary writ remedies of Articles 32 and 226;
- **Part IV:** Positive, socioeconomic commands (Articles 36–51) aimed at establishing a Socialist Welfare State. Under **Article 37**, they are expressly declared **non-enforceable by any court**, yet declared to be **"fundamental in the governance of the country"**, making it the solemn duty of the State to apply them in making laws.

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                    THE 5-PHASE EVOLUTION OF THE PART III - PART IV RELATIONSHIP
                                                  |
  Phase 1: Subordination ──► Phase 2: Harmony ──► Phase 3: Clash ──► Phase 4: Basic
Structure ──► Phase 5: Integration
  (Champakam, 1951)          (Kerala Ed. Bill)    (25th & 42nd Amd)   (Minerva Mills, 1980)
(Olga Tellis, Art 21)
```

2. The Five Evolutionary Epochs

279. **Phase I: Judicial Subordination (*Champakam Dorairajan*, 1951):**

- The Supreme Court held that unenforceable Directive Principles cannot override enforceable Fundamental Rights:

> *"The Directive Principles of State Policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights."*

- This rigid stance forced Parliament to enact the **1st Constitutional Amendment Act, 1951**, inserting Article 15(4) to save affirmative action.

280. **Phase II: The Era of Harmonious Construction (*In Re Kerala Education Bill*, 1958):**

- The Court discarded rigid subordination, adopting the doctrine of **Harmonious Construction**:

> *"The courts should not be ignorant of the Directive Principles... The two parts must be read harmoniously so as to give effect to both as far as possible."*

281. **Phase III: Legislative Supremacy and the Battle of Article 31C:**

- In 1971, Parliament enacted the **25th Amendment**, inserting **Article 31C**, which provided that no law giving effect to the Directive Principles in **Article 39(b)** (distribution of material resources) and **Article 39(c)** (prevention of concentration of wealth) could be challenged under Articles 14, 19, or 31.
- In ***Kesavananda Bharati* (1973)**, the 13-Judge Bench upheld this protective shield, affirming that socio-economic restructuring under Article 39(b) and (c) advances the constitutional vision.
- In 1976, the **42nd Amendment Act** attempted to expand Article 31C to give blanket supremacy to *all* Directive Principles over Fundamental Rights.

282. **Phase IV: The Basic Structure Synthesis (*Minerva Mills*, 1980):**

- A 5-Judge Constitution Bench struck down Section 4 of the 42nd Amendment as unconstitutional. Chief Justice Y.V. Chandrachud formulated the definitive constitutional metaphor:

> *"The Indian Constitution is founded on the bedrock of the balance between Parts III and IV. To give absolute primacy to one over the other is to tilt the constitutional harmony... Part III and Part IV together constitute the core of our Constitution. They are like the two wheels of a chariot, one no less important than the other. You cannot destroy the guarantees of Part III in the name of achieving the goals of Part IV."*

283. **Phase V: Transformative Integration (Reading Part IV into Part III):**

- In the post-emergency era, the Supreme Court synthesized the two parts by holding that Fundamental Rights must be interpreted in light of the Directive Principles:
  - *Right to Livelihood:* In ***Olga Tellis v. Bombay Municipal Corporation* (1985)**, Articles 39(a) and 41 were read into Article 21.
  - *Right to Education:* In ***Unni Krishnan* (1993)**, Article 45 was read into Article 21, culminating in Article 21A.
  - *Right to Clean Environment:* In ***M.C. Mehta*** and ***Subhash Kumar***, Article 48A was read into Article 21.
  - *Workers' Dignity:* In ***Bandhua Mukti Morcha* (1984)**, Articles 39(e), 39(f), 41, and 42 were woven into Article 21 to eradicate bonded and child labor.

3. Conclusion

The historic conflict between Fundamental Rights and Directive Principles has ceased to be an antagonistic battle. Today, they form an organic, indivisible constitutional continuum: **Part III provides the individual with the shield of liberty, while Part IV provides the State with the blueprint for social justice.**

MASTER BLUEPRINT 2 (25 MARKS)

Questions Addressed:

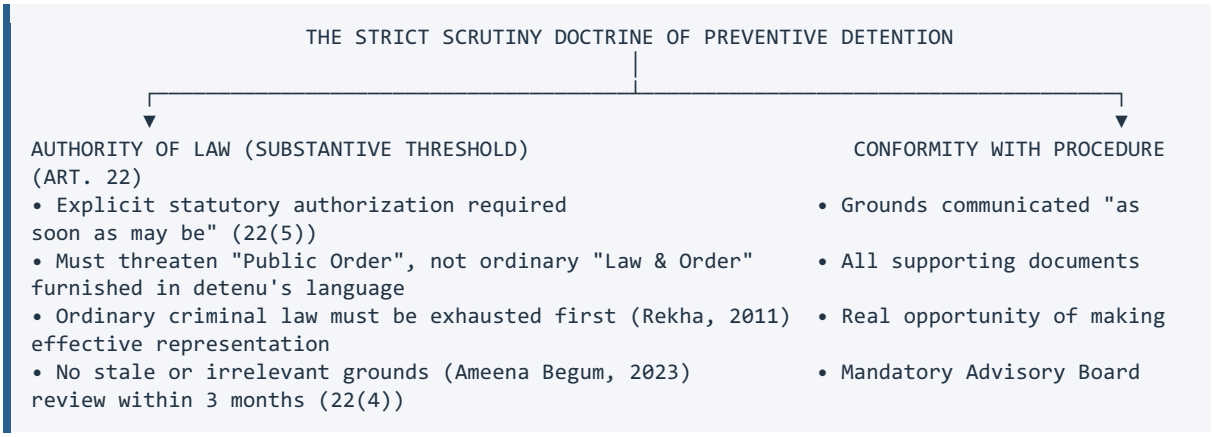
- *2018 (Set A), Q.4 & 2018 (Set B), Q.4:* Preventive Detention cannot be ordered by the executives without authority of law and conformity with the procedure established by law. Discuss. [25 Marks]

1. Introduction: The Constitutional Paradox of Preventive Detention

Preventive detention—the imprisonment of a human being not for an offence committed, but on the executive's subjective apprehension of future prejudicial activity—is the most extraordinary and dangerous power possessed by the Indian State. In the words of Lord Macmillan, it is a jurisdiction based on suspicion rather than proof.

While most democratic constitutions around the world recognize preventive detention only during wartime or declared national emergencies, the Indian Constitution is unique in according **permanent constitutional sanction to preventive detention in peacetime under Article 22(3) to 22(7)**.

Because preventive detention strips an individual of the basic guarantees of the criminal justice system—there is no charge-sheet, no trial, no cross-examination of witnesses, and no representation by a legal practitioner as of right—the Supreme Court has established an unyielding constitutional doctrine: **Preventive detention cannot be ordered without strict authority of law and meticulous conformity with the procedure established by law.**



2. The First Condition Precedent: Authority of Law

Under **Articles 21 and 22**, no person can be detained preventively except under the authority of a valid law enacted by a competent legislature:

284. **Legislative Competence:** Under the Seventh Schedule, Parliament has exclusive competence under **Entry 9, List I** (preventive detention for reasons connected with Defence, Foreign Affairs, or the Security of India). Parliament and State Legislatures share concurrent competence under

Entry 3, List III (preventive detention for reasons connected with the security of a State, maintenance of public order, or maintenance of supplies and services essential to the community).

285. **The "Public Order" vs. "Law and Order" Distinction:**

- In ***Ram Manohar Lohia* (1960)** and reaffirmed in* Ameena Begum v. State of Telangana *(2023) 9 SCC 587**, the Court held that preventive detention can never be invoked for ordinary breaches of "law and order" (such as individual thefts, cheating, or property disputes).
- It can be ordered only when the act affects the **tempo of life of the entire community**, threatening public order or state security.

286. **Exhaustion of Ordinary Criminal Law (*Rekha v. State of Tamil Nadu*, 2011):**

- The Court established that where ordinary criminal law (arrest under CrPC/BNSS, bail denial, prosecution) is sufficient to handle an accused, invoking preventive detention is a colourable exercise of power and substantively illegal.

3. The Second Condition Precedent: Strict Conformity with Procedure

In ***Rekha* (2011)**, the Supreme Court declared that when a citizen is deprived of liberty without a trial, **procedural safeguards are the only fundamental rights left to the detenu**. Consequently, even the slightest procedural infraction renders the detention order void ab initio:

287. **Communication of Grounds "As Soon As May Be" (Article 22(5)):**

- The detaining authority must furnish the specific, factual grounds of detention to the detenu. Vague, indefinite, or stale grounds violate Article 22(5) (*State of Bombay v. Atma Ram Sridhar Vaidya*, 1951).
- In ***Pramod Singla v. Union of India* (2023)**, the Supreme Court held that unexplained delay in executing the detention order or communicating grounds vitiates the subjective satisfaction of the executive.

288. **Furnishing Documents in a Language the Detenu Understands:**

- In ***Harikisan v. State of Maharashtra* (AIR 1962 SC 911)**, the Court held that communicating grounds in English to a detenu who understands only Hindi/Marathi without providing an authenticated translation violates Article 22(5).

289. **Earliest Opportunity for Effective Representation:**

- The detenu has a constitutional right under Article 22(5) to make a representation to the Government and the Advisory Board.
- In ***KM Abdulla Kunhi v. Union of India* (1991)**, the Court ruled that the Government has an absolute constitutional duty to consider and decide the detenu's representation with the utmost expedition; unexplained bureaucratic delay in deciding the representation automatically invalidates the detention.

290. **Mandatory Advisory Board Scrutiny (Article 22(4)):**

- Detention beyond 3 months cannot continue without the positive report of an independent Advisory Board comprising High Court judges, submitted within the 3-month window.

4. The Transformation from *Gopalan* to *Maneka Gandhi*

- In ***A.K. Gopalan* (1950)**, the Supreme Court held that "procedure established by law" meant any enacted law, and Article 19 did not apply to preventive detention.

- In ***Maneka Gandhi* (1978)**, this formalistic view was dismantled. The Court established that Articles 14, 19, 21, and 22 are interwoven. The procedure authorizing preventive detention must be **just, fair, and reasonable**, and free from manifest arbitrariness.
- In ***Justice K.S. Puttaswamy* (2017)**, the 9-Judge Bench formally buried the infamous majority ruling in* ADM Jabalpur *(1976)**, declaring that personal liberty under Article 21 is primordial and cannot be extinguished by executive decree even during emergencies.

5. Conclusion

Preventive detention is a severe infringement upon the most cherished fundamental freedom of a human being—personal liberty. Constitutional courts must act as vigilant sentinels, subjecting every executive detention order to the strictest judicial scrutiny. Where there is no clear authority of law, or where procedural safeguards have been bypassed by executive arrogance, the court must fearlessly issue a **Writ of Habeas Corpus** and set the citizen free.

MASTER BLUEPRINT 3 (10 / 12.5 MARKS)

Questions Addressed:

- *2022, Part B – Q.4:* 'Fundamental Rights and Fundamental Duties are supplementary and complementary to each other.' Discuss with judicial trends. [10 Marks]
- *2015 (Set B), Q.3(b):* Separation of powers in Indian Constitution. [12.5 Marks]

1. Fundamental Rights and Fundamental Duties: Complementary & Supplementary

While the original Constitution of 1950 contained Fundamental Rights (Part III) and Directive Principles (Part IV), it conspicuously lacked an explicit chapter on citizen duties.

Following the recommendations of the **Justice Swaran Singh Committee**, the **42nd Constitutional Amendment Act, 1976** inserted **Part IVA (Article 51A)**, prescribing **Fundamental Duties** for every Indian citizen (expanded to 11 duties by the 86th Amendment in 2002).

```
                    THE SYMBIOSIS: RIGHTS AND DUTIES
                                  |
  INDIVIDUAL LIBERTY (PART III) ◄──────────► CIVIC RESPONSIBILITY (PART IVA)
   • Right to free speech (19(1)(a))          • Duty to safeguard public property (51A(i))
   • Right to equality (14)                   • Duty to promote harmony & renounce misogyny
(51A(e))
   • Right to environment (21)                • Duty to protect natural environment (51A(g))
   • Right to education (21A)                 • Duty of parent to educate child (51A(k))
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291. **Jurisprudential Symbiosis:**

- As Mahatma Gandhi observed, *"The true source of rights is duty. If we all discharge our duties, rights will not be far to seek."*
- There can be no meaningful individual rights without a collective commitment to civic duty. A citizen cannot claim the freedom of speech to incite communal riots or destroy public property.

292. **Judicial Trends & Interpretative Application:**

- *Aids to Statutory Interpretation:* Although Article 51A is not directly enforceable via writs of mandamus, the Supreme Court has consistently held that Fundamental Duties serve as an invaluable guide in interpreting ambiguous constitutional and statutory provisions.

- *Testing "Reasonableness" under Article 19:* In ***State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat* (2005) 8 SCC 534 (7-Judge Bench)**, the Court held that in determining the reasonableness of restrictions on rights under Article 19(2) to 19(6), the Court must take into account the Fundamental Duties in Article 51A. The Court used Article 51A(g) (duty to protect environment and show compassion for living creatures) to uphold a total ban on the slaughter of cattle progeny.
- *Merit vs. Social Obligation:* In ***AIIMS Students' Union v. AIIMS* (2002) 1 SCC 428**, the Court struck down a 33% institutional quota in postgraduate medical admissions, relying on **Article 51A(j)** (duty to strive towards excellence in all spheres) to hold that merit and competence cannot be subordinated to arbitrary quotas.
- *Gender Dignity:* In ***Vishaka* (1997)** and* Joseph Shine *(2018), courts actively invoked Article 51A(e)** (the duty to renounce practices derogatory to the dignity of women) to eliminate patriarchal discrimination.

2. Separation of Powers in the Indian Constitution

- **Montesquieu's Doctrine:** In its pure American form, the Separation of Powers creates rigid, water-tight boundaries between the Legislature, Executive, and Judiciary.
- **The Indian Constitutional Model:** The Indian Constitution does not recognize a rigid separation of powers (*Ram Jawaya Kapur v. State of Punjab*, 1955). Instead, it adopts a parliamentary system characterized by a **broad functional division of work combined with institutional checks and balances**:
  - The Executive is part of, and continually accountable to, the Legislature (Article 75(3));
  - The Judiciary exercises Judicial Review over both legislative enactments and executive actions (Articles 13, 32, 226);
  - Parliament can impeach judges for proved misbehaviour (Article 124(4)).
- As held in ***Kesavananda Bharati* (1973)** and* Indira Nehru Gandhi *(1975), Separation of Powers is an immutable feature of the Basic Structure**. Neither branch can usurp the essential functions of the other.

PART 6: Critical Commentary, Contemporary Controversies & Reform Commission Recommendations

1. The Proliferation of Preventive Detention Laws

Civil liberties organizations highlight that despite judicial rulings in *Rekha* and *Ameena Begum*, state governments routinely deploy draconian state preventive detention laws (e.g., PSA in J&K, Goondas Acts in Tamil Nadu and Telangana, NSA across north India) as a substitute for ordinary police investigation:

- High Courts across India quash between 70% and 85% of all preventive detention orders annually on grounds of procedural non-compliance, mechanical drafting by district magistrates, and absence of public order threats.
- Legal scholars recommend that the **44th Constitutional Amendment Act, 1978 (Section 3)**—which mandated that the Advisory Board be constituted solely on the recommendations of the Chief Justice of the High Court and reduced maximum detention without board review to 2 months—should be formally notified into force by the Central Government.

2. The Codification of Fundamental Duties Debate

While some jurists argue for enacting statutory penalties for the willful violation of Fundamental Duties (e.g., disrespecting national symbols, destroying public property), the **Justice J.S. Verma Committee on Operationalization of Fundamental Duties (1999)** cautioned against blanket penalization. The Committee recommended that education, civic awareness, and sensitizing citizens from school level is the most effective constitutional method to operationalize duties.

3. Major Reform Commission Recommendations on Rights & Preventive Detention

REFORM PROPOSALS ON PREVENTIVE DETENTION		
Commission / Report	Key Recommendations	Status / Policy Impact
Justice J.S. Verma Committee on Fundamental Duties (1999)	• Integrate Fundamental Duties into school curricula	Adopted in school textbooks & civic bodies
National Commission to Review the Working of the Constitution (NCRWC, 2002)	• Implement unnotified Sec. 3 of 44th Amendment 1978 • Max detention 6 months	Awaiting Central Government executive notification
Law Commission 177th Report on Law of Arrest (2001)	• Stringent guidelines on arrest to prevent misuse of preventive powers	Incorporated into CrPC/ BNSS safeguards

293. **NCRWC (Venkatachaliah Commission, 2002):**

- Strongly recommended that the advisory board mechanism under Article 22 be made completely independent of the executive, with all members being sitting or retired High Court judges nominated by the Chief Justice of the respective High Court.
- Recommended reducing the maximum period of preventive detention from one year to six months.

294. **Synthesis:** The Indian constitutional order is an intricate ecosystem where Fundamental Rights, Directive Principles, Fundamental Duties, and institutional checks and balances exist in dynamic equilibrium. Preserving this balance is the supreme duty of every citizen, judge, and parliamentarian.