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MESSAGE FROM THE DIRECTOR

Dear Aspirant,

This book is dedicated to YOU, the untiring civil service aspirant who has the drive and commitment to persevere towards clearing this exam which is considered as one of the toughest exams in the world.

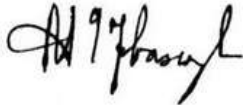
We congratulate you on choosing this book for “**Polity**”. Our attempt here is to simplify important concepts without losing the key points. Hence, we hope you will find this book useful in your civil services journey.

About this book

This book is a distillation of the expertise of the faculty at Officers IAS academy, explained in simple and easy to understand language. What you get to study in this book has been painstakingly collated by our faculty through their years of teaching and mentoring thousands of aspirants.

A strong zeal from you to clear this exam combined with our coaching and textbook will, I am sure help you scale great heights.

I wish you the very best in the most important endeavour of your life.



R. A. Israel Jebasingh

(IAS, 2004 Batch All India Rank 59)

Director of Officers IAS Academy

HOW TO USE THIS BOOK?

Hello Aspirant!

There is a subtle difference between putting in effort and putting in the right and focussed effort. That difference could determine whether you get into the civil services or not! This statement becomes highly relevant during the UPSC Main Examination stage.

Aspirants know that every mark scored or missed in the Main examination determines their presence as well as their place in the All-India Rank list. Unlike the Preliminary examination, Main exams are fairly predictable. But with Mains, completing the examination on time becomes the biggest challenge.

Even with persistent efforts, aspirants generally tend to struggle in completing the Mains Syllabus. And even when the syllabus is covered, there is a struggle in recollecting appropriate points during the examination.

Such challenges are faced by all UPSC Mains Candidates. This is because of the sheer mindboggling number of topics, dimensions, and links with current affairs that aspirants have to sift through in their mind before writing an answer – something that is indeed a herculean task.

We in the R&D team of the Officers IAS Academy, have been pondering over this challenge, and have found a solution.

Our R&D team spent a year meticulously combing through the *past 47 years'* Mains General Studies question papers, to identify all possible topics and dimensions ever covered for each subject in an UPSC Main examination. Our researchers, then set out to prepare a series of books for each of the 'Main exam subjects' (pertaining to GS1, GS2, & GS3) where all relevant content is covered in a scientific and precise manner. Aspirants can confidently use these books to 'complete' the UPSC Main Exam syllabus effectively and efficiently.

Please note, we do not advocate the use of these 'Mains Harvest' books as 'Standard' sources. However, instead of reading endless number of books for the UPSC preparation, aspirants can focus on the standard books (NCERTs) for foundational knowledge and then devote the rest of their time in studying the Officers IAS Academy's Mains Harvest books.

For you, dear aspirants, we have practically 'harvested' the 'essence' of the UPSC main examination to produce the 'Mains Harvest' book series. Use them well!

Thanking and wishing you all the very best in your preparations,

R&D Team,

Officers IAS Academy, Chennai.

Contents

Basic features of constitution -----	1
1) Parliamentary Democracy.....	1
2) Rights of minorities and their schemes and initiatives for their inclusion and development in society	3
3) Sovereign nature of Indian parliament.....	6
4) Concept of rule of law	6
5) Concept of judicial review Vs judicial activism Vs judicial overreach Vs judicial restraint	8
6) Concept of constitutional morality	10
Questions:	11
Preamble	13
1) India- A “republic” country.....	13
2) Objective resolution.....	14
Questions:	15
Fundamental Rights -----	16
1) Press rights and significance in India.....	16
2) Concept of reservation in India and recent developments.....	19
3) Reservation for Economically weaker section	21
4) Freedom of religion and recent developments.....	22
5) Preventive detention	24
6) Due process of law Vs Procedure established by law	26
7) Ex-post facto legislation.....	27
8) Indian concept of secularism.....	28
9) Secularism as contemplated by the Constitution of India has the following distinguishing features.....	30
10) Nature of citizenship in India.....	30
11) Linguistic minorities	33
12) Reservation for women in legislature	33
13) Critical Analysis of basic structure doctrine	36
14) Status of right to property.....	37
15) Children rights in constitution	39
16) Section 66A and Article 19.....	42

17) Development of environmental rights in Indian political scenario.....	43
18) Expanding Horizons of Right to Life and Personal liberty:	47
19) Gender Justice and Constitution:	48
Question:	49
Right to Information -----	50
1) Significance and recent developments.....	50
Directive Principles of State Policy-----	53
1) Uniform civil code - Pros and cons.....	53
2) Free Legal Aid:.....	54
Question:	56
Fundamental Duties-----	57
1) Nature, significance and challenges in enforcing Fundamental duties.....	57
Questions:	58
Separation of Powers -----	59
1) Separation of powers and Checks and balance in Indian Constitution:	59
2) Judiciary about separation of powers	61
Constitutional Amendments -----	62
1) Amendments which are struck down by judiciary	62
Questions:	63
42 nd amendment - Mini constitution-----	64
1) Why 42 nd Amendment Is Called the “Mini Constitution”	64
Questions:	66
Cooperative societies through amendment-----	67
1) What are Cooperative Societies?	67
Questions:	69
Emergency Provisions -----	71
1) Emergency provisions used since post-independence	71
2) Changes Made by 44th Amendment	72
3) Decreasing use of Article 356:.....	73
Questions:	73
Representation of People’s Act-----	75
1) Issues in ROPA 1951 act and measures to rectify it	75
Corruption -----	77

1) Lokpal and lokayukta	77
2) Corruption and measures to check corruption.....	79
Question:	83
States autonomy and creation -----	84
1) Principle of federation and issue in distribution of powers between state and centre	84
2) Process of creation of new states	85
3) Issues of regionalism since independence	89
4) Union government role in settling Interstate water sharing dispute.....	92
Questions:	93
Union Parliament -----	94
1) Importance and issues in opposition parties in parliament.....	94
2) Parliament control over PSUs	95
3) Methods by which parliament control over expenditure	96
4) Collective responsibility of parliament	99
5) Privilege and immunities of Indian parliament.....	100
6) Contempt of parliament and its kinds.....	102
7) Doctrine of colourable legislation	103
8) Delegated legislation and its purpose	104
9) MPLAD scheme.....	106
10) Advantage/disadvantages of Presidential form of government for India.....	108
11) Women reservation bill- merits/demerits	110
12) Relevance of Rajya Sabha and the challenges faced by it.....	111
Questions:	113
Union Executive -----	117
1) Duties, functions and Independence of CAG.....	117
2) Ordinance making and pardoning power of the president	118
3) President's power in relation to Scheduled areas	121
Questions.....	122
Judiciary -----	124
1) Importance of independence of judiciary and recent challenges	124
2) Wide scope of Public interest litigation.....	125
3) Pros and cons of All India Judicial Service	127
4) Issues in appointment and transfer of judges	128

5) Indian Judiciary for Environmentalism.....	130
6) Principle of Harmonious construction.....	131
Questions:	132
State legislature -----	134
1) Rationale behind State Legislative Councils	134
Questions:	135
Federalism/Union-State relations -----	136
1) Purpose of having a concurrent list	136
2) India - not a pure federation.....	138
3) Rationale for the creation of Niti Aayog.....	142
4) Reason for taking out EDUCATION from the state list and placing it in the concurrent list.....	147
5) GST and its Impact on center-state Relations in India	148
6) National Disaster Management and its Impact on center-state Relations in India.....	151
7) CBI and the scope of its jurisdiction among states of India	152
Questions.....	154
Local Self Government -----	155
1) Evolution of Panchayati Raj System	155
2) PESA 1996.....	160
3) Limited Impact of Women Reservation in Local Governments.....	164
4) Empowering local bodies:.....	166
Questions.....	167
Party system in India -----	169
1) Role of pressure groups in Indian politics.....	169
2) Role of caste in Indian politics	171
3) Impact of regional political parties in India- Positive and negative	171
4) Value based politics Versus Personality based politics	173
5) There are political personalities but no political parties in India.....	174
Questions.....	175
Election/ECI/Anti defection law -----	176
1) Problems of political defections and remedies.....	176
2) Measures by ECI/SC to reduce malpractices in elections.....	178
3) Process of Delimitation.....	180
4) Issue of Criminalisation of Politics	181

5) Positives and negatives of One Nation- One Election.....	183
6) The controversy around EVM Machines.....	184
Questions:	185
Institutions and Commissions -----	187
1) Compositions and Function of NCST	187
2) Compositions and Function of NCSC.....	189
3) Compositions and Function of Minorities Commission	192
4) Compositions and Function of the National Security Council.....	193
5) Compositions and Function of National Commission for Backward Classes.....	194
Questions.....	197
Statutory, regulatory and quasi-judicial bodies -----	199
1) Rationale between mergers and strategic disinvestment activities done by the centre.....	199
2) Role of national human rights commission and challenges faced by it.....	200
3) Quasi Judicial bodies – tribunals	202
4) Role of national women commission and challenges faced by it.....	203
Questions:	205
Comparison of Indian Constitutional Scheme with other Countries -----	206
1) Parliamentary Sovereignty in India and United Kingdom:.....	206
Questions:	207

Basic features of constitution

1) Parliamentary Democracy

Definition

- In short, a parliamentary democracy is a system of government in which citizens elect representatives to a legislative parliament to make the necessary laws and decisions for the country. This parliament directly represents the people.
- In a parliamentary democracy like India, **the three parts of the system**, namely the Legislative, Judiciary, and Executive, are theoretically separate, but in practice, the executive is a component of the legislature. The Executive remains accountable to Parliament. Parliament's role is to exercise political and financial control over the executive branch, as well as to provide legislative oversight of the administration.

Head of Government to be from the House of the People:

- Under **Article 75 of the Constitution**, the Prime Minister is appointed by the President and the other Ministers are appointed by the President on the advice of the Prime Minister.
- The Council of Ministers including the Prime Minister are collectively responsible to the Lok Sabha. Often our Prime Ministers are not from the Lok Sabha but from the Rajya Sabha. His responsibility being to the Lok Sabha, it is desirable that the Prime Minister is drawn from the Lok Sabha.

Different aspects of parliamentary control on executives :

1. Parliamentary Control over executive - Legislative Control

- When a law is enacted in Parliament, the government must explain all of its provisions and respond to queries from MPs. As a result, it prohibits the executive from taking arbitrary actions.
- Recently we have seen legislators outsource the law-making work (partially) to the executives (Bureaucrats), this is known as Delegated Legislation / subordinate legislation.
- In effect of this, the Chairman of Rajya Sabha advocated the idea of Legislative Impact Assessment which is the study of the impact of a law (being made and enforced) on the society over a period of time

2. Parliamentary Control over executive - Financial Control

- Both Houses must approve the government's budget and financial bills.
- Parliament forbids the government from incurring unreasonably high costs.
- Without Parliamentary approval, the government cannot withdraw any funds from the consolidated fund.

3. Parliamentary Control over executive - Representative Control

- MPs represent several groups of people. As representatives, they ask inquiries of the executives and thereby protect their people's interests through representation.
- Accountability of executive

4. Parliamentary Control over executive - Accountability of Executive

- For every action done by any of the ministers, the entire council of ministers is accountable to the Lok Sabha. Even the minister is **personally accountable** to the Lok Sabha for his ministry's actions.
- If the Lok Sabha does not approve the act of the minister. The whole cabinet has to resign, because of collective responsibility.
- Article 75 clearly states that the COM is collectively responsible to the Lok Sabha.

- Article 75 also contains the principle of individual responsibility. It states that the ministers hold office during the pleasure of the President, which means that the President can remove a minister even at a time when the COM enjoys the confidence of the Lok Sabha.

Parliamentary Standing committees as a tool of ensuring Parliamentary democracy:

- A Parliamentary Committee is a panel of MPs that is appointed or elected by the House or nominated by the Speaker/Chairman.
- The committee works under the direction of the Speaker/chairman and it presents its report to the House or to the Speaker/chairman.
- Parliamentary Committees have their origins in the British Parliament.
- They draw their authority from Article 105 and Article 118.
- Article 105 deals with the privileges of MPs.
- Article 118 gives Parliament authority to make rules to regulate its procedure and conduct of business.

Significance of parliamentary standing committees:

- **Connected:** They will represent Parliament in a number of interconnected departments and ministries.
- **Examination of reports/grants/bills:** They are in charge of investigating the requests for grants made by the ministries/departments in question, as well as examining and reporting to Parliament on relevant bills, annual reports, and long-term plans.
- **Committee reports are usually exhaustive** and provide authentic information on matters related to governance.
- **Better informed debates:** Unlike talks in open Houses, when party positions take primacy, discussions in committee allow members to have a more meaningful exchange of views. This enables them to make better policy judgments.
- **Scrutiny:** Public finances are scrutinized by the Public Accounts Committees, which examine the government accounts and the report of the Comptroller and Auditor-General of India. As a result, the risk of overspending is reduced, and the government's spending data are validated.
- **Improve legislation and regulations:** The Committee on Subordinate Legislation investigates and reports to the House on the appropriate exercise of regulations, rules, sub-rules, bye-laws, and other powers bestowed by the Constitution within the boundaries of certain statutes.
- Furthermore, they operate out of the **public eye**, are less formal than the regulations that govern legislative procedures, and serve as excellent teaching grounds for new and inexperienced members of the House.
- **DRSC members consistently strive towards consensus**, notwithstanding political differences. Such actions are necessary for a functioning democracy.

Challenges to Parliamentary democracy

- Frequent usage of ordinances under **Article 123 and 213** to pass important bills, bypassing legislative scrutiny. Eg: Land acquisition bill.
- Passing important legislation through the Money bill route. Recently the Aadhar Act was passed like this to bypass scrutiny of the Upper House.
- Taking important policy decisions without discussing them in Parliament. The announcement of **demonetization** was criticized for this.
- Passing important bills and budgets without much discussion **through the Guillotine method.**
- The ratio of passage of **Private member's** bills is very low.

- The direction of **Whip** curtails individual member's freedom in having opinion and taking decisions.
- According to **PRS Legislative Research**, although 60 percent of Bills were referred to DRSCs in the 14th Lok Sabha and 71 percent in the 15th Lok Sabha, this proportion fell to 27 percent in the 16th Lok Sabha.

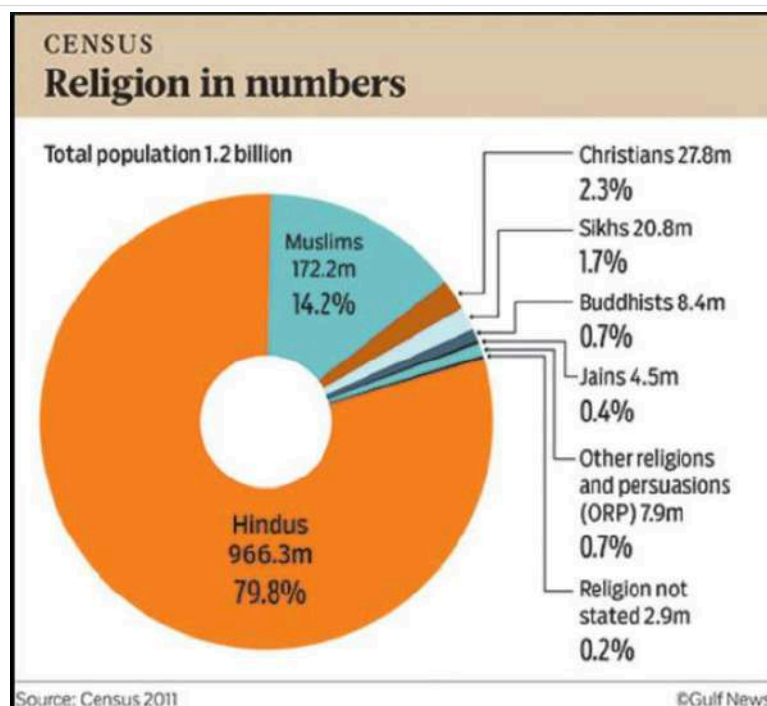
2) Rights of minorities and their schemes and initiatives for their inclusion and development in society

Definition

- The term "**Minority**" is not defined in the Indian Constitution. However, the Constitution recognises religious and linguistic minorities. **Linguistic and religious minorities are covered by the expression "minority"** under Article 30 of the Constitution. Since reorganization of the States in India has been on linguistic lines, therefore, for the purpose of determining the minority, the unit will be the State and not the whole of India. Thus, religious and linguistic minorities, who have been put on a par in Article 30, have to be considered statewise.

National Commission for Minority Education Institution (NCMEI) Act, 2004

- It gives minority status to educational institutions on the basis of six religious communities notified by the government under the **NCMEI Act, 2004-- Muslims, Christians, Sikhs, Buddhists, Zoroastrians (Parsis) and Jains.**



Issues faced by minorities

- **The problem of identity-** Because of the differences in socio-cultural practices, history, and backgrounds, minorities have to grapple with the issue of identity everywhere which gives rise to the problem of adjustment with the majority community.
- **The problem of Security:** Different identity and their small number relative to the rest of society develops a feeling of insecurity about their life, assets, and well-being. This sense of insecurity may

get accentuated at times when relations between the majority and the minority communities in society are strained or not very cordial.

- **The problem of equity:-** The minority community in society may remain deprived of the benefit of opportunities for development as a result of discrimination. Because of the difference in identity, the minority community develops the perception of the sense of inequity. Religion is a complex phenomenon in India. Though India is declared a 'secular' state, the problem of secularism looms large here. Conversion to Islam and Christianity has been a much controversial issue over the last couple of decades.
- **Varied reasons:—**ranging from poverty to perceived discrimination resulted in the alienation of Muslims and Christians in India. The Government of India constituted a committee on 9th March 2005 under the chairmanship of justice Rajendra Sachar to enquire and analyze the problems faced especially by Muslims in India.
- **Economic reasons:-**The Indian socio-economic fabric is very complex because it is much affected by caste, religion and the more regional/linguistic differentials. At the same time, the Indian economic, social and political institutions which have persisted for centuries have a historical basis also. These factors have given a unique character to Indian society. It has become a conglomeration of various layers and segments divided and subdivided.
- **Backwardness:-** Minority communities are unable to join the mainstream of society. Sachar Committee which was constituted in 2005 has placed Muslims below the scheduled castes, and scheduled tribes.
- **The problem of Representation:-** In terms of religious composition, 90.4% of MPs in Lok Sabha are Hindus. 5.2% are Muslims and another religious community represents 4% MPS. Muslims contribute only 2.5% of the Indian bureaucracy.
- **Lack of Clear definition:-** There was no clear definition for the minority which creates a huge flaw. Inclusion and exclusion error occurs in the implementation of Government schemes. Recently a PIL was filed in the Supreme court Regarding this matter.

Schemes/ Initiatives

- India has undertaken numerous initiatives to empower all sections of society without any discrimination. Particular focus has been given to the rights of women; education of children; skill development; and protect and promote culture, especially for minority Communities.

A. Educational empowerment

- Several Schemes for coaching, studies abroad, Government Jobs have been implemented. Between 2014- 2018, over 300 thousand students from minority communities have benefitted from the aforementioned schemes relating to educational empowerment.
- "Naya Savera" (New Dawn) Free Coaching and Allied Scheme to enhance skills and knowledge of students and candidates for employment through competitive examination and admission in technical and professional courses.
- "Padho Pardesh" Scheme (Study Abroad Scheme) for interest subsidy on educational loans for overseas studies in technical and professional courses.
- "Nai Udaan" to support students clearing Preliminary Examination conducted by the Central Government and State Governments such as those conducted by UPSC, SSC, State Public Service Commission, etc.
- "Begum Hazrat Mahal National Scholarship" for Meritorious Girls, implemented by Maulana Azad Educational Foundation (MAEF).

B. Support to minority institutions

- Government of India has granted Grants-in-Aid to Maulana Azad Education Foundation (MAEF) for implementation of education and skill related schemes.
- Equity to National Minorities Development and Finance Corporation (NMDFC) for providing loans at concessional interest rates to minorities for self-employment and income generating activities. INR 19.79 billion amount of concessional loans were disbursed to minority communities for education and employment in 2017-18.

C. Infrastructure development

- Government is implementing Pradhan Mantri Jan Vikas Karyakram (PMJVK), a multi-sectoral development programme in identified Minority Concentration Blocks, Minority Concentration Towns, Minority Concentration District Headquarters & Cluster Villages for Infrastructural Development.

D. Skill development and Employment generation

- 'Nai Manzil' Scheme for formal school education and skilling of school dropouts;
- 'Seekho aur Kamao' - a placement linked skill development scheme for minorities, aims at upgrading skills of minority youth in various model/traditional skills depending upon their qualification, present economic trends and market potential which can earn them suitable employment or make them skilled to go for self-employment.
- 'Garib Nawaz Skill Development' Training for Minorities is a scheme to provide short-term job oriented skill development courses to youths belonging to the six centrally notified minority communities. Between 2014 and 2018, 5,23,890 people from minority communities have benefitted from the Government's employment-oriented skill development programme.
- USTTAD, i.e. Upgrading the Skills and Training in Traditional Arts/Crafts for Development. Hunar Haat is also being organized under the Scheme from 2016-17 to further promote traditional crafts/arts, employment generation and strengthen their market linkages. Since its inception, 21 Hunar Haat were organized for providing employment and employment opportunities to more than 300 thousand artisans and craft persons from the minority communities.

E. Special needs:

- Hamari Dharohar Scheme to preserve the rich heritage of minority communities under the overall concept of Indian Culture.
- Swachh Vidyalaya is a scheme under which, schools/ institutions that do not have the facility of toilets in their premises are provided grants to construct the separate toilet blocks for girls and boys.

F. Other affirmative action for the welfare of Minorities

- In a major step towards women empowerment, the Parliament on 30 July 2019 passed the Muslim Women (Protection of Rights on Marriage) Bill 2019, to abolish the practice of Triple Talaq thereby extending gender justice and gender equality to Muslim women.
- The Citizenship Amendment Act 2019 enacted on 12 December 2019 provides for expedited consideration for Indian citizenship to certain persecuted religious minorities such as Hindu, Sikhs, Buddhist, Jain, Parsi and Christian communities from Pakistan, Afghanistan and Bangladesh which are already in India so that their basic human rights are met.

3) Sovereign nature of Indian parliament

Definition

- As per the dictionary meaning the word sovereign means “one possesses supreme political power”; and another meaning of the word is “having independent authority and the right to govern itself”.
- The Preamble of India proclaims India as a state to be sovereign, it testifies to the fact that India is no longer a dependency or colony or possession **of the British Crown**. As a sovereign independent state, India is free both internally and externally to take her own decisions and implement these for her people and territories.

Concept sovereignty of parliament in respect to India

- We can list the differences related to power of the Indian and UK Parliament.
- These differences also limit the sovereignty of the Indian parliament.
- **Written nature of the constitution:**
 - The Indian parliament operates within the limits as prescribed in the constitution. Whereas the constitution of Britain is neither written nor there is anything like a fundamental law of the land.
- **Federal system of governance:**
 - India has a federal system of government with a constitutional division of powers between the union and the states. Britain has a unitary system of government and hence, all the powers are vested in the Centre.
- **System of Judicial Reviews:**
 - The adoption of an independent Judiciary with the power of judicial review also restricts the supremacy of our Parliament. The British Courts have to apply the Parliamentary laws to specific cases, without examining their constitutionality, legality or reasonableness.
- **Fundamental rights:**
 - Article 13 prohibits the State from making a law that either takes away totally or abrogates in part a fundamental right. In Britain, on the other hand, there is no codification of justiciable fundamental rights.
- As a result, while our Parliament's terminology and organizational structure are similar to those of the British Parliament, there is a significant difference between the two. The Indian Parliament is not a sovereign institution in the same way that the British Parliament is. Unlike the British Parliament, the Indian Parliament's authority and jurisdiction are defined, limited, and constrained.
- The Indian Parliament is comparable to the American Congress in this sense in which the written nature of the Constitution, the federal form of government, the judicial review system, and the Bill of Rights all limit Congress's power in the United States.

4) Concept of rule of law

Rule of Law: meaning

- As the term itself connotes, ‘Rule of Law’ means rule of law and not of men. The expression “Rule of Law” is derived from the French phrase ‘**le principe de legalite**’ meaning the principle of legality. Defining rule of law Prof Wade expressed- “The rule of law requires that the government should be subject to the law rather than the law subject to the government”

Dicey’s concept of Rule of Law

- It would be appropriate to discuss the views of Dicey, as he is known to be the main exponent of the concept of rule of law. However the origin of his doctrine was attributed to Sir Edward Coke. He introduced for the first time that, ‘**King is under God and the Law.**’ The firm base of rule of law owes its exposition to Albert Venn Dicey. Dicey, in his book Law and Constitution in the year 1885

further developed this concept given by Coke. According to Dicey's theory, rule of law has three pillars based on the concept that "a government should be based on principles of law and not of men", these are-

1. Supremacy of Law;
2. Equality before the Law; and
3. Predominance of Legal spirit.

Supremacy of Law

- This is the **first pillar** of **Dicey's concept of rule of law**. It means that the law rules over all people including the persons administering the law. According to Dicey the absolute supremacy of the law as opposed to the arbitrary power of the government is what constitutes the rule of law. In other words a man should only be punished for the distinct breach of law, and not for anything else. The person cannot be punished by the government merely by its own fiat but only according to the established law.
- Further, Dicey asserted that discretion has no place where there is supremacy of law. According to him discretion is a link to arbitrariness. Dicey says that wherever there is discretion, there is room for arbitrariness and discretionary authority on the part of the government to jeopardize the legal freedom of the people.

Equality before Law

- **The second important pillar** of Dicey's concept of Rule of Law is Equality before Law. In other words, every man irrespective of his rank or position is subject to the ordinary law and jurisdiction of the ordinary court and not to any special court.
- According to him, special law and special courts are a threat to the principles of equality. Therefore he is of the view that there should be the same set of laws for all the people and should be adjudicated by the same civil courts.

Predominance of the legal spirit

- The **third pillar** of Dicey's concept of Rule of Law is **predominance of legal spirit**. According to Dicey, for the prevalence of the rule of law there should be an enforcing authority and that authority he found in the courts.
- He believed that the courts are the enforcer of the rule of law and hence it should be free from impartiality and external influence. Independence of the judiciary is therefore an important pillar for the existence of rule of law. He asserted that the courts of law and not the written constitution are the ultimate protector of an individual's fundamentals

Rule of Law under Indian Constitution

- In order to develop Indian democracy, rule of law has played a great role. At the time of framing of Constitution, the framers had two options i.e. USA and England. Some of the provisions were adopted from the USA and some of them were adopted from England.
- Rule of law was adopted from England by our constitutional fathers and many provisions were incorporated in the Indian Constitution. The Indian Constitution is considered to be supreme and no one is above the Indian Constitution. Rule of law is also given impliedly in the preamble and such concept is enshrined in Part III of the Indian Constitution.
- In case of violation of such rights, one can approach the Supreme Court or High Court under Article 32 and 226 of the Indian Constitution. The Constitution of India is enriched with the principles of law i.e. justice, equality and liberty. Any law made by the Central government or State government must be complied in accordance with the Constitution of India. If any law made by the legislature contravenes with the provisions of the Constitution then such law will be declared void.

Limitations and Exceptions to the Rule of Law

1. Delegated Legislation:

- The grant of discretionary powers to government officials to enable them perform their duties effectively can be used against the citizens. Officials can make statutory regulations that when administered will abuse the rights and liberties of individuals.

2. Diplomatic Immunity:

- Ambassadors and diplomats cannot be sued and prosecuted in countries where they are serving as they are treated as above the law of the host country, rather they can be repatriated. This undermines the principle of equality of everybody before the law.

3. Existence of Administrative Tribunals or Special Courts:

- These courts and tribunals use special procedures that are not observed in civil courts. This makes justice obtained in such courts not to be in consonance with the rule of law. More so, most of the judgments of such tribunals forbids individual rights of appeal.

4. Special Privileges:

- There are some certain individuals that are immune against the law of the country. Such people include the President and the Vice President, Governors, members of the Parliament (National Assembly) and some other high ranking government officials. Judges are immune from law while adjudicating in the court. This is to make them carry out their duty without fear or favor.

5. State of Emergency and War:

- During certain conditions that are critical which may make the government declare a state of emergency or when there is war, the government usually evokes certain discretionary powers. These powers when exercised by the government usually denies individuals part of their fundamental human rights as people may be confined to their homes or restricted from carrying out certain activities or individuals may be forced to go and fight war to defend their country even if it is against their wish.

6. Poverty, Illiteracy and Ignorance:

- Most people, especially in developing countries, are illiterate. They do not know how to read and write; hence, they cannot read and comprehend their rights as entrenched in the constitution. Sometimes, when they can read, they are ignorant of what constitutes their rights. While the level of poverty in the country does not allow them to pursue or sue anyone that infringed their rights.

5) Concept of judicial review Vs judicial activism Vs judicial overreach Vs judicial restraint

Judicial Review

- Legislatures, one of the organs of the government, are vested with the power to make laws, which is, however, not absolute in nature. Because it does not become absolute that no one can challenge any arbitrary law, a concept known as judicial review came into existence which is the process wherein the Judiciary reviews the validity of laws passed by the legislature.
- The power of judicial review comes from the Constitution of India itself (Article 13) & it is invoked to safeguard & enforce the fundamental rights under Part III of the Constitution. Article 13 prohibits the Parliament and the state legislatures from making laws that “may take away or abridge the fundamental rights” guaranteed to the citizens of the country & the term ‘law’ includes any “Ordinance, order, bye-law, rule, regulation, notification, custom or usage” having the force of law in India.
- *Examples of Judicial Review:* Section 66A of the IT Act was struck down as it was against the Fundamental Rights under the Indian Constitution.

Judicial Activism

- Judicial activism refers to the use of judicial authority by the Judiciary to define and enforce what is for the benefit of society. Historian Arthur Schlesinger, Jr. coined this term in 1947, and its foundation in India was laid down by Justice V.R Krishna Iyer, Justice P.N Bhagwati, Justice O.Chinnappa Reddy, and Justice D.A Desai.
- Judiciary cannot function as a legislature, but by the concept of judicial activism, it has successfully brought reforms, new concepts, policies etc.
- However, too much interference by the Judiciary in this process will become judicial overreach.

Examples of Judicial Activism

- Mechanisms with no constitutional backing like Public Interest Litigation, not proposed by the Legislature, but the Judiciary came up with this concept. It has strict locus standi; anyone can file PIL, which is filed in the form of writ petition but only in the High Courts and Supreme Court.
- Appointment of Judges by the Collegium system in which senior most Judges appoints another Judge is considered judicial activism by the Judiciary.
- Reforms in Cricket: The Supreme Court has been trying its best to restructure the Board for the Control of Cricket in India (BCCI) although the BCCI is a private body. SC had also set up a Mudgal committee and the Lodha Panel to investigate the betting charges and suggest reforms which must be adhered to.
- Maneka Gandhi v. UOI (1978), The court iterated the term 'procedure established by law' under Article 21 of the Constitution by repositioning it as 'due process of law' meaning that the procedure which is established by the law must be just, fair and reasonable. It is the legal requirement that the state must respect all of the legal rights owed to a person.
- Kesavananda Bharati case (1973): The Supreme Court of India declared that the executive had no right to interfere and tamper with the basic structure of the constitution.
- I.C. Golaknath & Ors vs State Of Punjab & Anr. (1967): The Supreme Court declared that Fundamental Rights enshrined in Part III are immune and cannot be amended by the legislative assembly.

Criticism of Judicial Activism

- It created a controversy over the supremacy between Parliament and Supreme Court. It is alleged to disturb the delicate principle of separation of powers & checks and balances.

Judicial Overreach

- There is a very thin line between Judicial activism and Judicial Overreach.
- In layman's terms, when Judicial activism surpasses its limits and becomes Judicial adventurism, it is known as Judicial Overreach. When the judiciary oversteps its powers, it may intervene with the proper functioning of the legislative or executive organs of government.
- This is highly undesirable under Indian democracy as there has to be a proper separation of power between the three organs of the government, which even forms the feature of our Indian Constitution. So, it destroys the spirit of separation of powers.
- *Examples of Judicial Overreach:*
 - What makes any action activism or overreach is based upon an individual's perspectives. But generally speaking, striking down of NJAC bill and the 99th constitutional amendment and bringing collegium system for appointment of judges, or the order passed by the Allahabad High Court making it compulsory for all Bureaucrats to send their children to government school or misuse of the power to punish for contempt of court are all considered as Judicial Overreach.

Judicial Restraint

- Judicial Restraint is the antithesis of Judicial Activism. Judicial Restraint is a theory of judicial interpretation that encourages judges to limit the exercise of their own power. In short, the courts should interpret the law and not intervene in policy-making.
- Judges should always try to decide cases on the basis of: The original intent of those who wrote the constitution. Precedent – past decisions in earlier cases.
- Also, the court should leave policy making to others. Here, courts “restrain” themselves from setting new policies with their decisions.
- EXAMPLE-Recently the SC has restrained itself in increasing the marriage age of women from 18 to 21 and left it to the domain of parliament.

6) Concept of constitutional morality

Definition and background

- The concept of constitutionalism is that of a polity governed by or under a constitution that ordains essentially limited government and rule of law as opposed to arbitrary, authoritarian or totalitarian rule. A Constitutional government should necessarily be democratic government. Also, constitutionalism is a natural concomitant of a written constitution inasmuch as a written constitution is bound to define and delimit the powers and functions of various organs of the state and a government under a written constitution can only be limited government.
- Constitutional Morality means adherence to or being faithful to bottom line principles of constitutional values. It includes commitment to an inclusive and democratic political process in which both individual and collective interests are satisfied. In the context of the constitution of India, the constitutional values are Democracy, Socialism, Equality and Integrity, briefly it is the preamble which clarifies the constitutional values.
- The principle of constitutional morality basically means to bow down to the norms of the constitution and not to act in a manner which would become violative of the rule of law or reflection of action in an arbitrary manner. It actually works at the fulcrum and guides as a laser beam in institution building.

Sources of Constitutional Morality

- The term ‘morality’ is not excessively stated in the Constitution, let alone constitutional morality. However, there can be four sources from which constitutional morality derives itself. These are as follows:
 1. Constitutional morality can be originated from within the Constitution itself. If read and interpreted properly, Articles 12 to 35 (Fundamental Rights), Articles 36 to 51 (Directive Principles of State Policy), Preamble and the Fundamental Duties tend to have the pervasive essence emphasizing upon constitutional morality.
 2. The debates and discussions that happened in the Constitutional Assembly have been one of the most important sources of constitutional morality as Ambedkar’s views have been taken as the basis of modern-day understanding of the same.
 3. The events that unfolded during the framing of the Constitution and the requisite constitutional history associated with it.
 4. The case laws and precedents, specifically in the modern-day era with so many draconian laws read down by the Hon’ble Supreme Court and various High Courts in upholding the spirit of constitutional spirit, morality and strengthening democratic ideals.

The contemporary interpretation of Constitutional Morality

In the context of the present era, constitutional morality can be primarily defined to be constituted of two sub-classifications: as a spirit or force of the Constitution and as the antonym of popular morality.

- Ever since the advancement of years after the introduction of the constitutional rule in India, constitutional morality has scarcely been used by the courts. It was subtly indicated in the very famous **Kesavananda judgment** by the apex court when it propounded the conception of the basic structure of the Constitution.
- Another famous case when a mention of “breach of constitutional morality” of having been committed was the First Judges case, a.k.a. **S.P. Gupta v. Union of India**. Thereafter, it was only recently in 2010 that Justice Ajit **Prakash Shah in Naz Foundation v. Government of NCT of Delhi** first used it in an antithetical manner to popular acceptance and standards of morality. In this form, a precedent was set for the courts to disregard societal norms, stigmas and limitations while assessing the actions of the State. For instance, in this case, while deliberating upon the issue of decriminalization of homosexuality, then a criminal offense under Section 377 of the Indian Penal Code, the Court took into cognizance the ideal of upholding the constitutional principles rather than society’s perception with regards to the legitimacy of same-sex relationships.
- The trend continued, as judges started giving the rationale of constitutional morality in their judgments thereafter. The ex-Chief Justice of India, Justice Deepak Misra, in the **Government of NCT of Delhi v. Union of India** equated constitutional morality to a ‘second basic structure doctrine’. The fact of the principle being respected and adhered to by both the citizens as well as officials was reinstated and it, acting as a check on both of these classes alike, was reinforced by the justices.
- Almost all the revolutionary judgements in the recent past, whether it be the **Navtej Singh Johar judgment** on homosexuality or the **Joseph Shine judgment** on adultery, had constitutional morality as one of their crucial fundamentals. In fact, in the Indian **Young Lawyers’ Association v. Union of India**, commonly known as the **Sabarimala judgment**, the Supreme Court also bypassed the doctrine of essentiality (the principle protecting the ‘integral’ religious practices of a community) to uphold the supremacy of constitutional morality.

Questions:

1. What is Parliamentary Democracy? How does the Indian Parliament exercise control over the Union Executive? Can the Parliament have any control over the State Executives? Assess the role of Standing Committees of the Parliament in the exercise on control.
2. Examine the relative roles of the Legislature, Judiciary and Executive in the functioning of the parliamentary system of Government of India. Is it a fact that the Executive has been tending to be more powerful over the years?
3. ‘Separation of Powers is essential to ensure individual liberty’ Discuss this with regard to the provisions in the Constitution and practices adopted so far.
4. There is no need to replace the Parliamentary form of Government in India with the Presidential form of Government. Justify or oppose this statement with cogent arguments.
5. It is the duty of the majority to instil confidence in the minority. Conversely, the minorities must also look beyond narrow sectarian interests and work for the larger goal of a real secular society in India. Evaluate in the light of the spirit of the Indian Constitution and the Indian experience.
6. Is the Indian Parliament a “Sovereign” or a “non-Sovereign” legislature or both?
7. Discuss the political, social and economic characteristics of the Indian State.
8. Describe the emergence of Basic Structure concept in the Indian Constitution.

9. Distinguish between Parliamentary and Presidential forms of Government. Do you think that changing over to Presidential form will be a solution for better governance? Substantiate your answer.
10. What do you understand by the term 'Rule of Law'? How does the Constitution of India seek to establish it?
11. Examine the need for the review of the Indian Constitution.
12. Bring out the aberrations of the parliamentary system of government in India.
13. What is a Constitution? What are the main sources of the Indian Constitution.
14. Do you think there is a need for a review of the Indian Constitution? Justify your view.
15. Write on Significance of 26th November in the country's polity in about 20 words.

Preamble

1) India- A “republic” country

Meaning

- 'Republic' is a state in which the people and their **elected representatives** hold supreme power. Rather than a **monarch**, it has an **elected head of state**. People provide power to leaders they elect to represent and serve their interests in a 'Republic'.
- The head of state in a **republican government is elected rather** than a hereditary monarch. As a result, the term "republic" refers to a government in which no one owns public power. India is democratic republic, meaning its offices are open to every citizen of India, unlike the **UK** where the highest office in the country is reserved for the monarchy.

Advocates of republic form of government

- Many leading Indians from the **mid-nineteenth century** onwards were fascinated by and had written admiringly about the Indian and Western republics from their different perspectives.
- The republican idea was particularly popular among the spokesmen of the Scheduled and 'lower' castes. **Jotirao Phule**, one of their ablest and earliest spokesmen, had read and was influenced by the Western republican writers including **Thomas Paine's Rights of Man**, and praised the republican spirit of equality, love of liberty, and commitment to public well-being. He attributed the post-Renaissance resurgence of Europe to the rise of the republics and the decline of India to the overthrow of the Buddhist republics by the Brahmanic monarchies.
- **Ambedkar** took a broadly similar view and was particularly interested in the French and American republics. He studied the latter closely during his years at Columbia University, wrote and lectured on the subject, and made a powerful case for making India a republic. He admired the **French revolution of 1789** and its 'republican' and egalitarian spirit. His Independent Labour Party (founded in 1931) was later called the Republican Party of India. Although this happened after his death, he had already set the wheels in motion.
- Several mainstream **liberal** and **socialist** leaders too were great admirers of the republican form of government. **Jawaharlal Nehru** wrote about the modern European republics in his **Glimpses of World History**, praising their great virtues such as civic courage, public spirit, egalitarian ethos, and love of freedom, and was most enthusiastic about the French revolution. He declared himself a republican in his Presidential address at the Lahore session of Congress in 1929 and came close to equating republicanism with socialism. **J.P. Narayan, Lohia, Narendra Dev, M.N. Roy**, and others shared his view.

Essence of republic form of government

- Although the above and other advocates of the republic drew their inspiration from different sources and stressed its **different features**, they shared a broad consensus on what it meant and why it was important.
- For them, it overlapped with but was not the same as democracy and referred primarily to neither an elected head of state nor even a form of government as democracy did but to a political and social order characterized by **four** important features.
- These were **social and economic equality, the state as a public institution, an active and public-spirited citizenship, and separation of powers**.

2) Objective resolution

Background

- The Indian Constitution represents the **aims** and **aspirations** of the makers of the Indian Constitution. However, the making of every constitution requires a start, i.e. a **philosophy**. The Objective Resolutions provided the much-needed philosophy of the Indian Constitution and inspired in the shaping of the Indian Constitution.
- “The Objective Resolution, 1946” was introduced by **Jawaharlal Nehru** in the very **first session of the Constitution Assembly**. Basically, these resolutions were the aspirations of people who were making the Constitution.
- It can be considered as the preamble of the vast dream, which the constitution makers sought to achieve after the independence in the form of a new India. And these resolutions were framed as the **Preamble** of the Indian Constitution.

What was the Objective Resolution?

These resolutions were moved on 13th December by Jawaharlal Nehru. Further, these resolutions were adopted on 22nd January, 1947 by the assembly. The summary of these resolutions is as follows:

- India is an **independent, sovereign, republic**.
- India shall be a **Union of erstwhile British Indian territories, Indian States, and other parts outside British India and Indian States as are willing to be a part of the Union**.
- Territories forming the Union shall be **autonomous** units and exercise all powers and functions of the Government and administration, except those assigned to or vested in the Union.
- All powers and authority of sovereign and independent India and its **constitution** shall flow from the **people**.
- All people of India shall be guaranteed and secured **social, economic and political justice; equality of status and opportunities and equality before law; and fundamental freedoms – of speech, expression, belief, faith, worship, vocation, association and action – subject to law and public morality**.
- The **minorities, backward and tribal areas, depressed** and other **backward classes** shall be provided adequate safeguards.
- The **territorial integrity** of the Republic and its sovereign rights on land, sea and air shall be maintained according to the justice and law of the civilized nation.
- The land would make a full and willing contribution to the **promotion of world peace** and welfare of mankind.

Why were these resolutions adopted by the constituent assembly?

- The President of the Constituent Assembly, Dr. **Rajendra Prasad** told all the assembly that they must adopt this resolution without any second thought. And asked all the members to vote for it, to adopt the things said and written in the resolution. The resolution was thus adopted with complete majority.
- Again, on 17th October, 1949, the Constituent Assembly thought to discuss the preamble. A member of the assembly, **Hasrat Mohani** suggested that instead of “**a Sovereign Democratic Republic**”, **it must be made, “a Union of India Socialist Republics”**. This was objected by another member saying that doing so would be antithesis to the very constitution they had passed.
- Similar to this, there were many **discussions** about what should be included in the Preamble and what should not be. But same as everything, the baseline to decide was these resolutions, which were introduced in the very first session.
- The major reason behind the adoption of these resolutions in form of the preamble was that these resolutions **encompassed the clear thoughts of the constitution makers**. It contained very

explicitly, what kind of India is required after the independence, therefore the Constituent assembly after some slight changes, adopted these resolutions as the Preamble of Worlds biggest Constitution.

Questions:

1. What are the major commitments of the Constitution of India as incorporated in its preamble?
2. Why is India called a Republic?
3. The Preamble to the Constitution is aimed to embody the fundamental values and the philosophy on which the Constitution is based. Elucidate.
4. What is the significance of a preamble to a constitution? Bring out the philosophy of the Indian polity as enshrined in the Preamble of the Indian Constitution

Fundamental Rights

1) Press rights and significance in India

Meaning

- Freedom of press or media refers to the rights given by the Constitution of India under the freedom and expression of speech in **Article 19(1)(a)**. It encourages independent journalism and promotes democracy by letting the people voice their opinions for or against the government's actions.
- Article 19 was brought to light after the **Romesh Thappar vs State of Madras case** highlighted the importance of media being the fundamental basis of all democratic organizations. However, it recognised the 'public safety and public order' under **Article 19 (1-A)** and dismissed the case.

Significance of freedom of press for any country

- **Strengthening a nation:** Free media works towards strengthening the sovereignty and integrity of a nation.
- **Fundamental to a democratic society:** The freedom of press is fundamental to a democratic society like India for it is helpful in strengthening democracy.
- **Check on Government and Administrators:** An independent press and news-media press acts as an important check on Government and Administrators.
- **Voice against any social ill or wrong:** It is also responsible to raise voice against any social ill or wrong.
- **Acts for the public:** At national, regional and local level, it is the public's voice, activist and guardian as well as educator, entertainer and contemporary chronicler.
- **Source of information:** An unbiased information is important for a democracy and its growth. Media helps in providing critical information to citizens. E.g data on economy, health, education etc. must be correct and accurate without any bias toward the government.
- **Educate:** Media is important to educate people on issues that are of utmost importance for society. E.g Increasing number of rape cases are threat to society. It is important to report the exact number of cases and help in sensitizing the society.
- **Awareness:** Media make society aware of their democratic rights and fight the three institutions of democracy.
- **Watchdog:** Media reporting on public affairs and investigations into wrongdoing in the administration of public affairs is must for a healthy democracy. This includes exposing frauds or corruption cases that personally benefit politicians. This helps citizens to vote for the best government, defeating corrupt and dishonest governments.
- **Good Governance:** Media plays an important role in auditing government policies and spending. An unbiased media is important for transparent reporting.

Legal restrictions on Press/Media (Article 19(2))

However, there are certain restrictions in **Article 19(2)** to protect the nation and its integrity. The restrictions can be imposed in case of threats against:

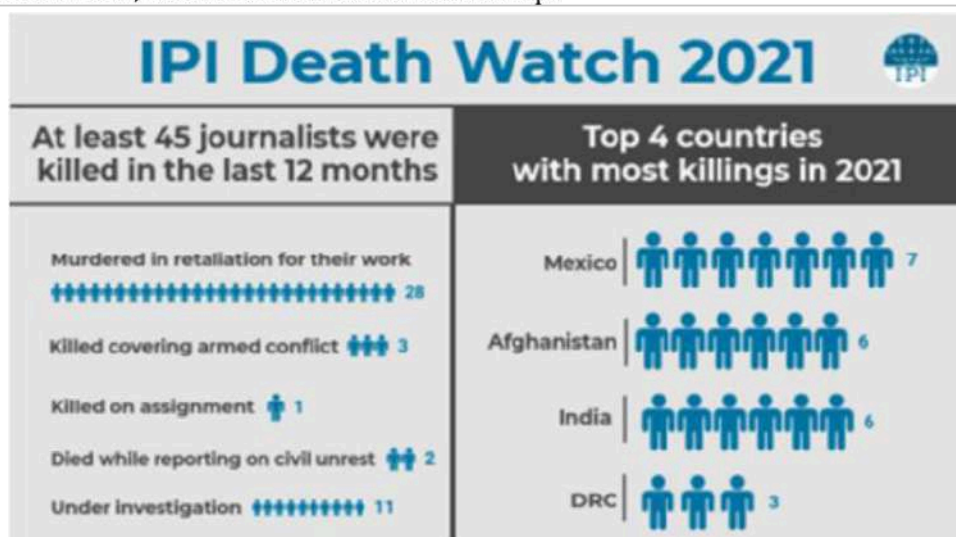
- Sovereignty and integrity of India
- Security of the State
- Friendly relations with foreign states
- Public order, decency or morality
- Contempt of court

- Defamation
- Incitement to an offense

Challenges faced by Press/media

Freedom of Press in India is generally considered to be **free and vibrant**. However, in recent years, there have been concerns about the erosion of press freedom in India. Some of the key issues include:

- **Intimidation and harassment of journalists:** Journalists in India have been subjected to intimidation, harassment, and physical attacks by both state and non-state actors. This has created a climate of fear, which can lead to self-censorship.



- As of 2021, **6 journalists have been killed** because of their work.
- India is among the top **4 countries** with the most number of deaths on record.
- **Legal challenges:** There have been several cases where journalists and media organizations have been sued for defamation or sedition, which can have a chilling effect on free speech.
- **Government control:** The government has a significant influence over the media in India, particularly through its control of broadcast frequencies and advertising revenue. This can lead to self-censorship by media organizations that are dependent on government funding or support.
- **Internet shutdowns:** The government has been increasingly using internet shutdowns as a means of suppressing dissent and controlling the flow of information. This can severely restrict the ability of journalists and media organizations to report on events and issues.
- **Lack of media literacy:** Many people in India, particularly in rural areas, may not be aware of the concept of fake news and may not have the skills to identify it. This makes them vulnerable to being misled by false information.
- **Misuse of social media:** Social media platforms like Facebook, Twitter, and WhatsApp have become popular tools for spreading fake news and propaganda that can be harmful to society.
- **Pressure from political parties and business interests:** Media houses in India often face pressure from political parties and business interests to promote certain agendas or suppress certain stories. This can result in biased reporting and the spread of false information.
- **Lack of regulation:** India has a large number of media outlets, both traditional and digital, and there is often a lack of regulation and oversight. This can lead to the spread of false information and unethical practices like paid news.

- India has fallen eight places from **142nd to 150th** in the **2022** among the 180 countries. India's position has been consistently falling in the index since 2016 when it was ranked 133.

Landmark Supreme Court judgments related to freedom of press in India

1. **Romesh Thapar v. State of Madras (1950)**: This case established that freedom of speech and expression, which includes the freedom of the press, is a fundamental right protected by the Constitution of India.
2. **Sakal Papers Ltd. v. Union of India (1962)**: This case established that government restrictions on the size and number of advertisements that newspapers could publish were a violation of freedom of speech and expression.
3. **Bennett Coleman & Co. v. Union of India (1973)**: This case established that the government's power to restrict the freedom of the press in the interests of public order or morality must be exercised within narrow and clearly defined limits.
4. **Indian Express Newspapers v. Union of India (1985)**: This case established that the freedom of the press includes the freedom to criticize the government and that government officials must be held to a higher standard of tolerance for criticism than private citizens.
5. **Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal (1995)**: This case established that the right to receive information was a fundamental right protected by the Constitution and that the government had a duty to ensure that citizens had access to accurate and objective information.
6. **Sahara India Real Estate Corporation Ltd. v. SEBI (2012)**: This case established that the media has a duty to act responsibly and in the public interest, and that media freedom does not extend to defaming individuals or institutions without justification.

Press council of India

The PCI was established under the **PCI Act of 1978**.

Composition

- The PCI consists of a chairman and **28** other members.
- The Chairman is selected by the **Speaker** of the Lok Sabha, the **Chairman** of the Rajya Sabha and a **member** elected by the PCI.

Functions

The functions of the PCI include

- Helping **newspapers maintain their independence**.
- Build a **code of conduct for journalists** and news agencies.
- Help maintain "**high standards of public taste**" and foster responsibility among citizens.
- **Review** developments likely to **restrict flow** of news.

Powers

- The PCI has the power to **receive complaints of violation** of the journalistic ethics, or professional misconduct by an editor or journalist.
- The PCI is **responsible** for **enquiring** into complaints received.
- It may **summon witnesses** and take evidence under oath, demand copies of public records to be submitted, even issue warnings and admonish the newspaper, news agency, editor or journalist.
- Decisions of the PCI are **final** and cannot be appealed before a court of law.

Limitations on the powers of the PCI:

The powers of the PCI are restricted in **two ways**.

- The PCI has **limited powers of enforcing the guidelines issued**. It **cannot penalize** newspapers, news agencies, editors and journalists for violation of the guidelines.



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