

12. There is no strict separation of powers under the Indian Constitution, with the executive, legislature and judiciary empowered to carry out functions which may be considered within the purview of the other. Discuss.

(250 words) 15

भारतीय संविधान के अंतर्गत शक्तियों का कोई कठोर पृथक्करण मौजूद नहीं है, जिसमें कार्यपालिका, विधायिका और न्यायपालिका को उन कार्यों को संपादित करने हेतु सशक्त किया गया है जिन्हें दूसरे के क्षेत्राधिकार में शामिल माना जा सकता है। चर्चा कीजिए।

A) separation of power as a concept was introduced by Aristotle. It means that no one organ of the state interfere with the functioning of the other.

1. In India, Article 50 provides for separation of power however we have not followed it in the strict sense.
2. The mutual delegation of powers and sharing of Responsibility establishes harmony between the Executive, legislature and Judiciary

Exeg: Subordinate legislation

1. Executive performing role of law making
[Responsibility of legislature]
2. Executive being a part of legislature :
3. legis

delegated

3. Judicial Activism

where judiciary venture into role of policy making.

4. Judicial Review

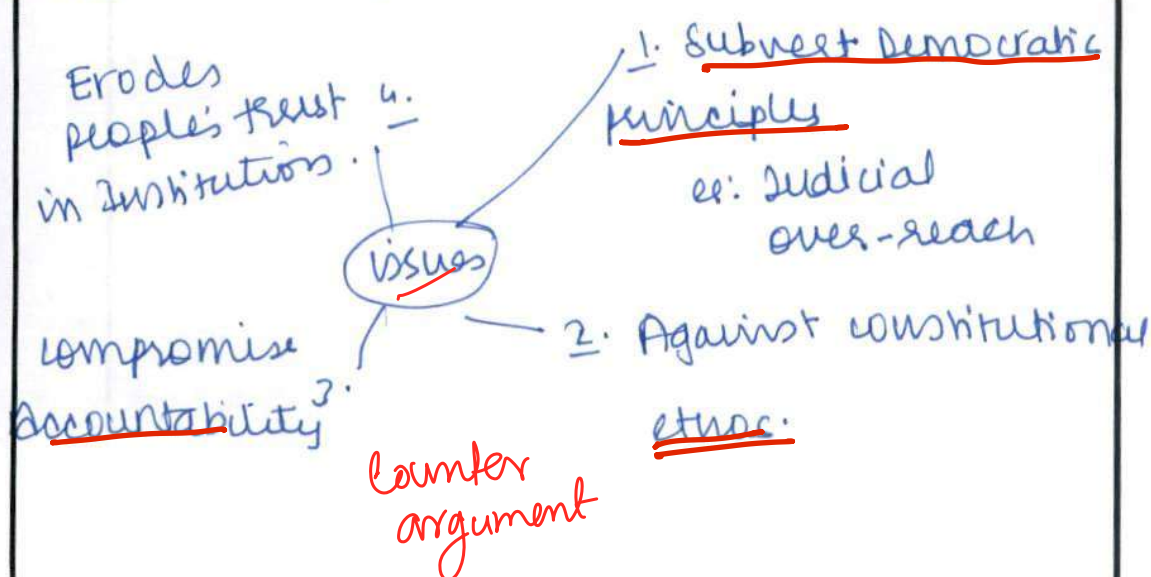
Pronouncing a law as ultra vires.

5. Impeachment

Parliament taking up judicial role of removing president
supreme court judges etc.

Therefore, the harmony between roles is maintained

However it may pose problems of its own.



Therefore, in India, unlike US, there is separation of functions and not powers.

Despite its issues, it helps maintaining co-ordination harmony and establishes robust system of checks and balances.

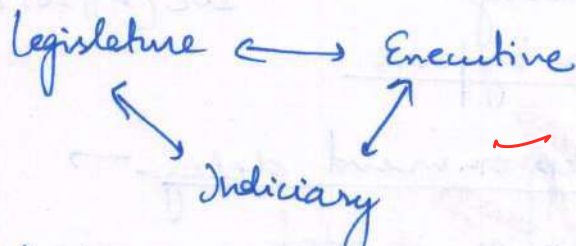
1. 'Checks and balances' is one of the core principles of the Indian constitution. However, in recent times, it has been eroded in many instances, which might lead to a loss of public trust in the system. Discuss.

(10 Marks, 150 Words)

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हिसाब में नहीं
लिखना चाहिए
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1

The Doctrine of Checks and Balances ensure the three organs of government are accountable to each other.



It is present in form of:

1. A-75: The Executive i.e. PM with Council of Ministers are collectively responsible to the house

2. A-13, A-12 - Judicial Review

3. Judges Enquiries Act, 1968
- Removal of Judges by Parliament

4. Administrative control of Executive + Majority in legislature.

E → L

E → J
L → J

J → L

E → L

J → E

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5. Appointment of Judges by executive

SOP has been eroded by :-

1. A-123 ^{Ex} → Ordinances → ^{Legis}
 → Farm bill
 → Labour codes
 → IBC (A), 2019
2. Parliamentary ^{Legis}
 Committee bypass
3. Judicial appointment delay ^{Judiciary} →
 20% vacancies in total
4. Judicial activism ^{Judi} and
 exceptionelism → 99th AA NJAC
 → A-129 (contempt)
5. Parliamentary privileges erode.

It impacts public trust
by showcasing majoritarianism,
bias of Parliament (executive) 9

XXX-X-GSI/20

Part 3

Judiciary exclusivity ⁵ → Referral to committee ^{NCRWC}
 → Renegotiated
 (Judiciary) now are few ways

8

1.

यह तर्क दिया जाता है कि अनुच्छेद 22 के कुछ हिस्से मूल अधिकार नहीं हैं बल्कि भारत के नागरिकों के लिए 'मौलिक खतरे' हैं। भारत में निवारक निरोध सम्बन्धी कानूनों के मुद्दों पर बहस के आलोक में चर्चा कीजिए।

(उत्तर 150 शब्दों में दें)

It has been argued that some parts of Article 22 are not Fundamental Rights but 'Fundamental Dangers' to the citizens of India. Discuss in light of the debate on issues around the preventive detention laws in India. (Answer in 150 words)

10

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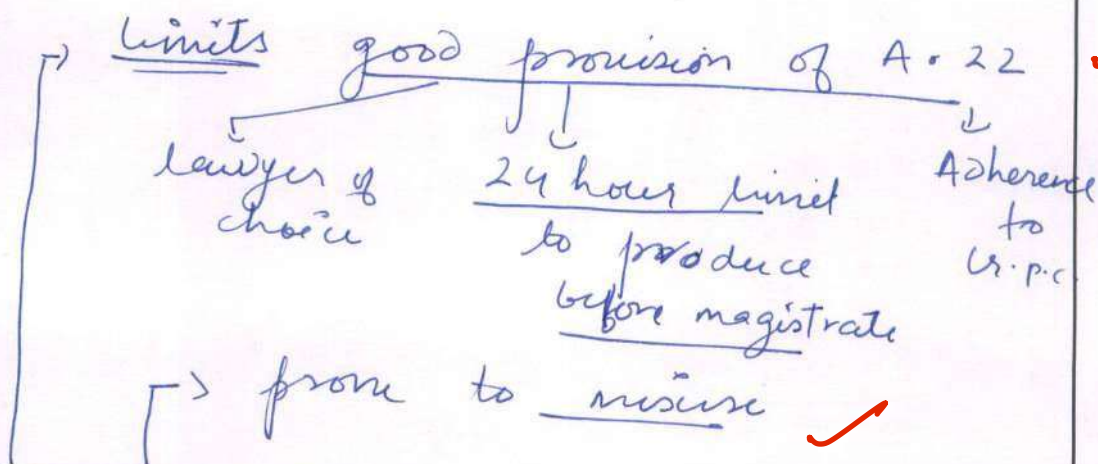
Article 22 is a part of Right to freedom, it protects an individual from illegal detention and provides certain rights.

Part of Article 22 considered Fundamental Danger

- ① Parliament and State Legislature could make laws for preventive detention → no trial for 3 months
- (2) Preventive detention → limited access to lawyer
- (3) further on the basis of a Board headed by high court judge detention can be extended to more than 3 months
- (4) Laws such as U.A.P.A, N.S.A,

~~Food~~ Jammu and Kashmir
prevention law are made under
Article 22

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Issues with preventive
Detention law

→ NICRB → Only
21. conviction
under U.A.P.A

→ Negatively received by
Human Rights Agency such
as UNHRC etc.

Need for such laws

→ National security threat

- secession
- terrorism

→ Delay in ordinary criminal
justice system

As the Supreme court
has highlighted A. 22 is a
necessary evil for protecting unity
and integrity of India.

1.

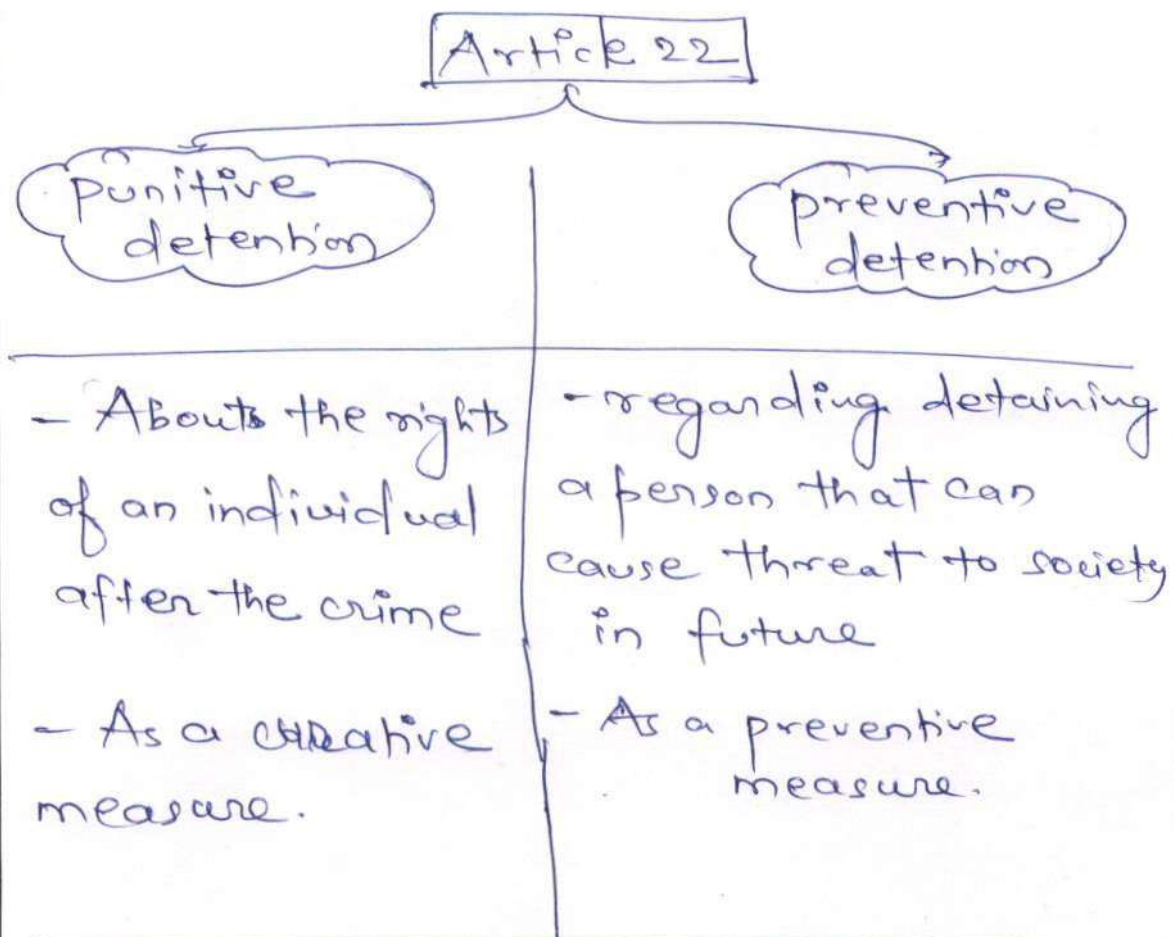
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India is the only constitution in the world that provides for preventive detention under Article 22 of the constitution.



Issues with preventive detention:-

① Goes against notion of separation of powers - as executive is

4. Discuss the need for codification of parliamentary privileges in India, in light of the uncertainty and ambiguity around them. (150 words) 10

भारत में संसदीय विशेषाधिकारों के बारे में अनिश्चितता और अस्पष्टता के अलावा, उनके संविदाकरण की आवश्यकता पर चर्चा कीजिए।

PARLIAMENTARY PRIVILEGES

to MPs and MLAs provide autonomy in their actions and immunity from proceedings in legislatures.

U/A 105 and 194 → individual privileges to MPs & MLAs

↓
Freedom of speech and arrest from civil cases.

Further, constitution provides for addition of any privilege through statute, but hasn't been codified yet.

Need for codification:

- ① Blatant misuse by disrupting parliamentary proceedings
(eg.) Adjournment sine die of RS in January 2022.

- ② Blanket Protection to speech used → leads to disruption of



Q.12) Distribution of GST revenues provides an undue advantage to the Centre especially during extra-ordinary circumstances like the pandemic, thus hampering fiscal federalism in India. Critically Analyze. (15 Marks, 250 Words)

जीएसटी राजस्व का वितरण, विशेषकर कोरोना महामारी जैसी असामान्य परिस्थितियों के दौरान केंद्र को अनुचित लाभ प्रदान करता है, जिससे भारत में राजकोषीय संघवाद प्रभावित होती है। आलोचनात्मक विश्लेषण करें। (15 अंक, 250 शब्द)

Fiscal federalism entails the distribution of taxes and fiscal resources between centre and states, and ~~not~~ amongst states.

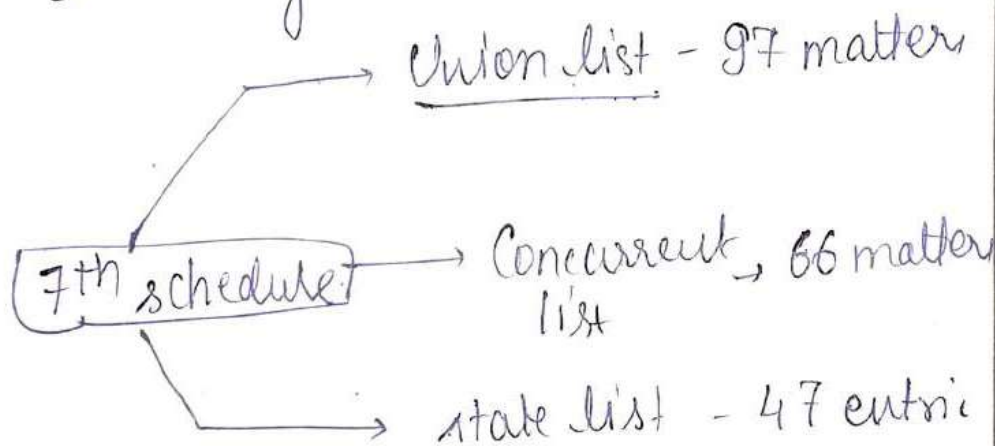
The GST system introduced in 2017 is said to be a game-changer in fiscal federalism as:

- States gave up many taxation rights in the spirit of one nation, one tax
- Uniform taxation was introduced across states bringing equity in horizontal fiscal federalism.
- States were also ensured compensation for revenue losses according to GST Compensation Act for

13. Federal tensions in India highlight the need for reforming the Seventh Schedule through the addition, removal and appropriate placement of entries. Discuss. (250 words) 15

भारत में संघीय तनाव, प्रविष्टियों को जोड़ने, हटाने और उचित व्यवस्थापन के माध्यम से सातवीं अनुसूची में सुधार की आवश्यकता को रेखांकित करते हैं। चर्चा कीजिए।

Seventh schedule of constitution
mentions legislative power of
~~execut~~ state government and
central government



42nd amendment removed entries
from state list to concurrent
list.

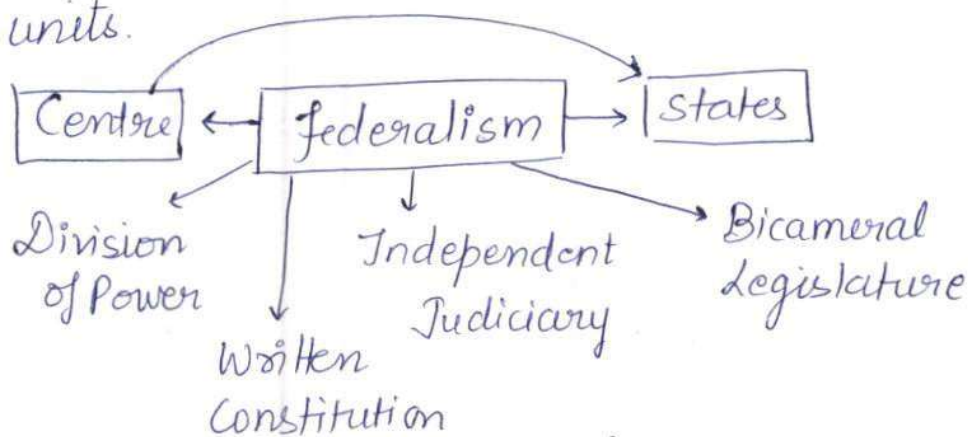
However, the present condition
requires modification in 7th schedule
for competitive and cooperative
federalism

11. Explain why it is argued that India is a sui generis case of federalism.

(250 Words) 15 Marks

ब्याख्या कीजिए कि यह तर्क क्यों दिया जाता है कि भारत संघवाद का एक अद्वितीय उदाहरण है।

Federalism is the bedrock of the democratic edifice of Indian Parliamentary Governance. It can be defined as the arrangement where there is a division of power between the centre and the constituent units.



K C Wheare, the ^{famous} ~~authority on the~~ scholar did an extensive research and called Indian constitutional scheme as 'sui generis' case of federalism.

This implies it has features of both Parliamentary form and the