Subject Name: Constitution Law
Topic Name: Preventive Detention

Table of Content:-

Introduction..... 1
Constitutional Framework and Rationale..... 1
Purpose and Scope of Preventive Detention.....1
Constitutional Safeguards and Judicial Scrutiny..... 2
Principles Governing Judicial Review..... 2
Parameters for Assessing Subjective Satisfaction.....2
Adherence to Procedural Norms and Timelines..... 2
Ten Guidelines for Judicial Review (Ameena Begum v. The State of Telangana & Ors.)..... 2

Introduction

Preventive detention, a provision allowed under the Constitution, stands as a unique measure aimed at averting threats to the security, safety, and welfare of the state and nation. While it allows executive action based merely on suspicion, it operates within the exception clause (3) of Article 22, overriding the protection against arbitrary arrest guaranteed in clauses (1) and (2).

Constitutional Framework and Rationale

The clauses (1) and (2) of Article 22 of the Constitution serve as pillars safeguarding personal liberty, ensuring protection against arbitrary arrest except under a warrant issued by a court of law.

However, clause (3) of Article 22 carves out an exception, stating that the protection guaranteed in clauses (1) and (2) does not apply to any person detained under laws providing for preventive detention. This exception indicates the gravity of preventive detention as a measure necessary for the greater good, namely, preserving the security and welfare of the state and nation.

Purpose and Scope of Preventive Detention

As elucidated by Hon'ble A.N. Ray, CJ. in **Haradhan Saha vs. State of West Bengal**, the purpose of preventive detention is to forestall threats posed by elements endangering the security and safety of the state and nation.

- It functions as a preemptive measure, allowing the executive to detain individuals suspected of engaging in activities prejudicial to specified objects outlined in validly enacted laws.
- While preventive detention is deemed draconian and dreaded, its constitutionality is acknowledged, albeit subject to stringent safeguards.

Constitutional Safeguards and Judicial Scrutiny

The power of preventive detention, though granted by the Constitution, is not absolute. It is subject to constitutional safeguards outlined in relevant articles and further refined through judicial decisions.

Despite its intrusive nature, the subjective satisfaction of the detaining authority, upon which preventive detention orders are based, is not justiciable in terms of factual correctness.

However, the judiciary, through landmark decisions, has delineated the contours of judicial reviewability, ensuring that preventive detention orders adhere to constitutional principles.

Principles Governing Judicial Review

The judiciary has established principles guiding the review of preventive detention orders. Cases such as **A.K. Gopalan vs. State of Madras and Shibban Lal Saksena vs. State of Uttar Pradesh** highlight the necessity of valid and specific grounds for detention.

Courts have invalidated orders based on irrelevant or non-existent grounds, emphasising the importance of adherence to constitutional mandates.

Parameters for Assessing Subjective Satisfaction

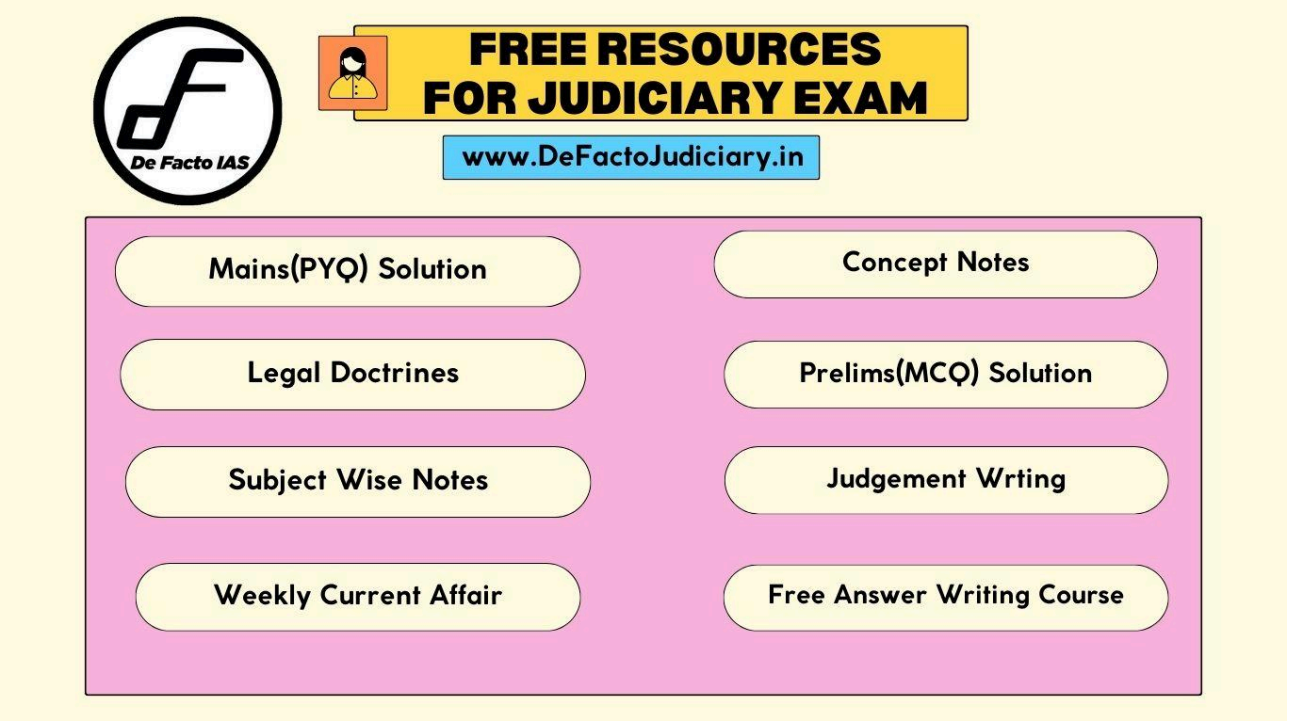
Additionally, the courts have outlined parameters for assessing the subjective satisfaction of the detaining authority. Decisions like **Rameshwar Shaw vs. District Magistrate** highlights the requirement of relevant and specific grounds for detention.

Icchu Devi Choraria vs. Union of India emphasises the need for a reasonable link between past conduct and future behaviour justifying detention.

Important Links for Judiciary Free Resources (Click on Each to Open Respective Pages)	
Subject Wise Mains PYQ Solution	Essay for Judiciary
Subject Wise Notes	Legal Doctrines
Landmark Judgements	GS Notes
Weekly Current Affair	Subject Wise Prelims PYQ Solution
Free Answer Writing Course	Judgement Writing
Telegram Link	Youtube Link

Adherence to Procedural Norms and Timelines

Moreover, the judiciary insists on adherence to procedural norms and timelines. Cases such as **Sama Aruna vs. State of Telangana** show the importance of strict adherence to procedural requirements. Failure to meet these standards renders detention orders vulnerable to judicial intervention.



Ten Guidelines for Judicial Review (Ameena Begum v. The State of Telangana & Ors.)

1. **Requisite Satisfaction:** The detention order must be based on the requisite subjective satisfaction of the detaining authority.

2. **Application of Mind:** The detaining authority must apply its mind to all relevant circumstances and base its decision on material within the scope and purpose of the statute.

3. **Purpose of Detention:** The power must be exercised for achieving the purpose for which it has been conferred and not for an improper purpose unauthorised by the statute.

4. **Independence of Authority:** The detaining authority must act independently and not under the dictation of another body.

5. **Non-Self-Disabling:** The authority must not disable itself from applying its mind to the facts of each individual case through self-created rules of policy or other means.

6. **Rationally Probative Value:** The satisfaction must be based on materials of rationally probative value relevant to the subject-matter of the inquiry.

7. **Live and Proximate Link:** There must be a live and proximate link between the past conduct of the individual and the imperative need to detain them.

8. **Precision of Grounds:** The grounds for detention must be precise, pertinent, and relevant, enabling the detenu to make a suitable representation.

9. **Timely Adherence:** Adherence to timelines provided by law is crucial for the validity of the detention order.

10. **Judicial Scrutiny:** The exercise of power is subject to judicial review, and any breach of legal requirements may render the detention order vulnerable to judicial intervention.

De Facto IAS