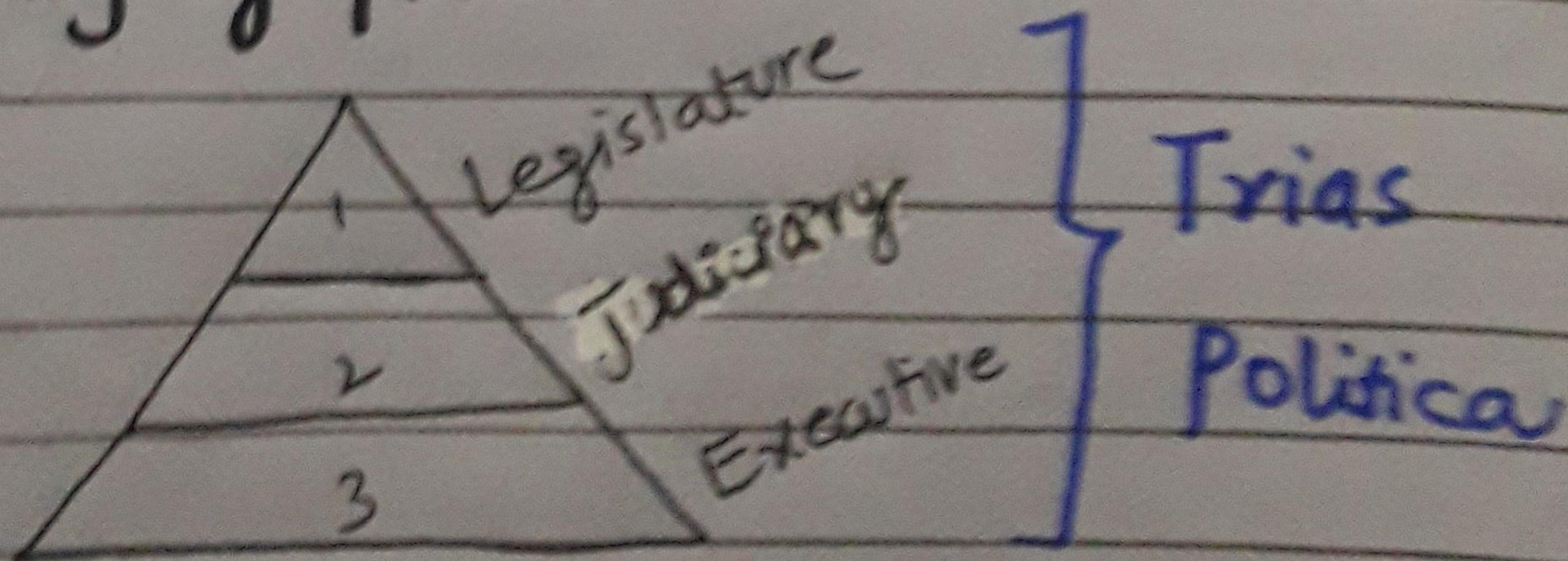


Q No 3) How does the system of checks and balances work in the trichotomy of powers? Explain with examples?

1 Introduction:

The word "trichotomy of power" means division into three parts. So in the structure of government, trichotomy of power means that power is divided into three categories that is called separation of powers. That is legislature, executive and judiciary. If these three systems are working separately in their domains that is called separation of power and thus a government can run the state efficiently. In this way Government can keep check and balances. Initially this theory of separation of power was given by Montesquieu, the celebrated French thinker of 18th century. He was the first writer who expounded this three fold division a theory of separation of powers in order to safeguard the liberty of an individual.

2 Trichotomy of Power:



In most of the countries there is the separation of power. Similarly in Pakistan this trichotomy of power exists.

3 **Organs of Government**

This trichotomy of power is the separation of power among three departments. These three departments are extremely important for the government to run the state. That's why these three departments are referred to as three organs of Government.

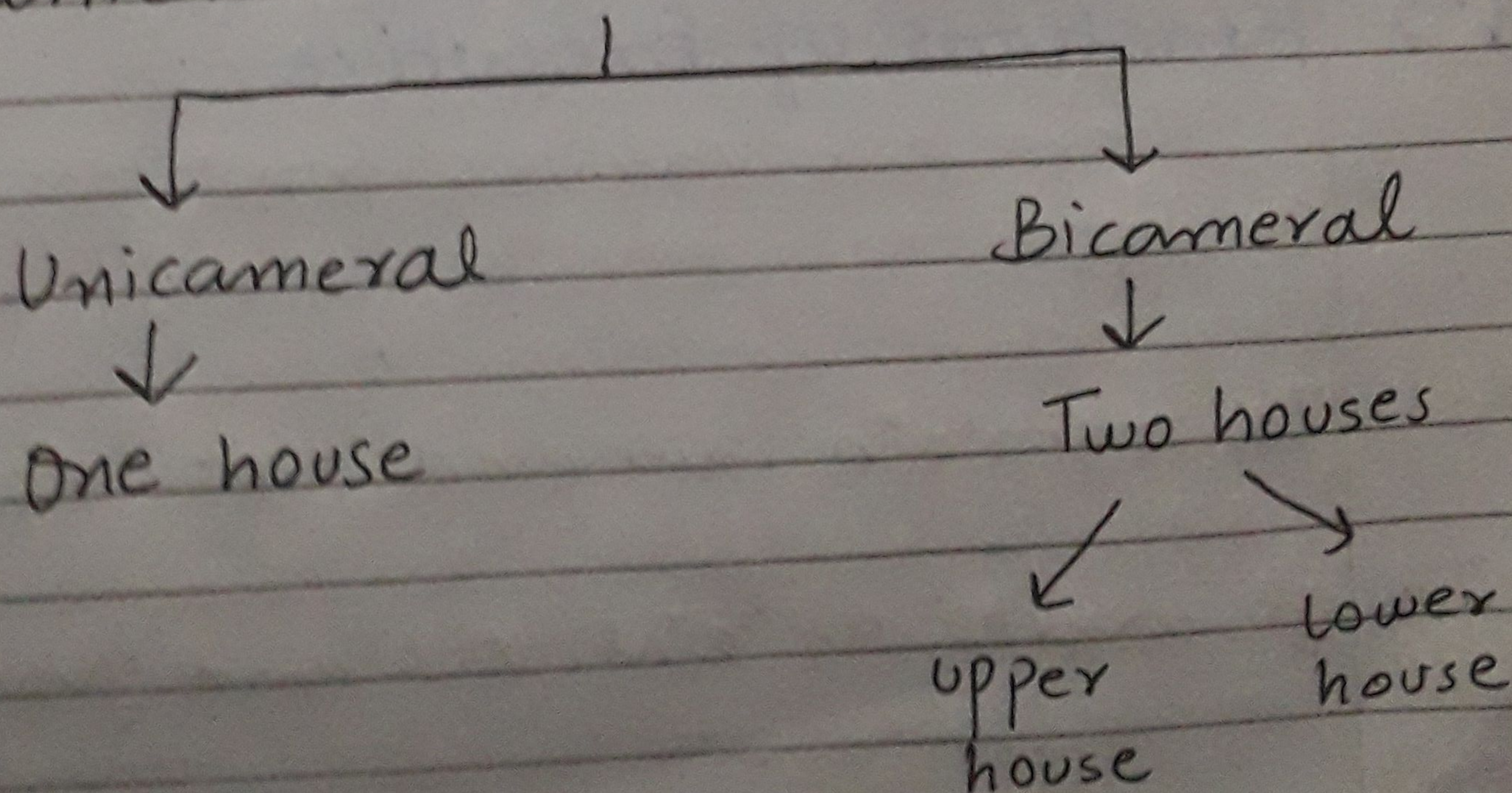
1. Legislature
2. Judiciary
3. Executive

4. **Legislature:**

In the parliamentary form of government, legislature do exists. It has various functions to perform.

4.1 **Types of Legislature**

- Unicameral
- Bicameral



4.2 Functions of legislature:

There are various functions of the legislature.

- 4.2.1 Legislature used to make laws. It passes new laws or amends or repeals old ones
- 4.2.2 Legislature has a control over national finances.
- 4.2.3 Legislature has a role in administrative functions, especially in the cabinet or parliamentary form of government
- 4.2.4 It has a role in amendment of the constitution
- 4.2.5 It has also some other important functions

5. Executive:

One of the important organs of state is executive. It has also important functions in the state.

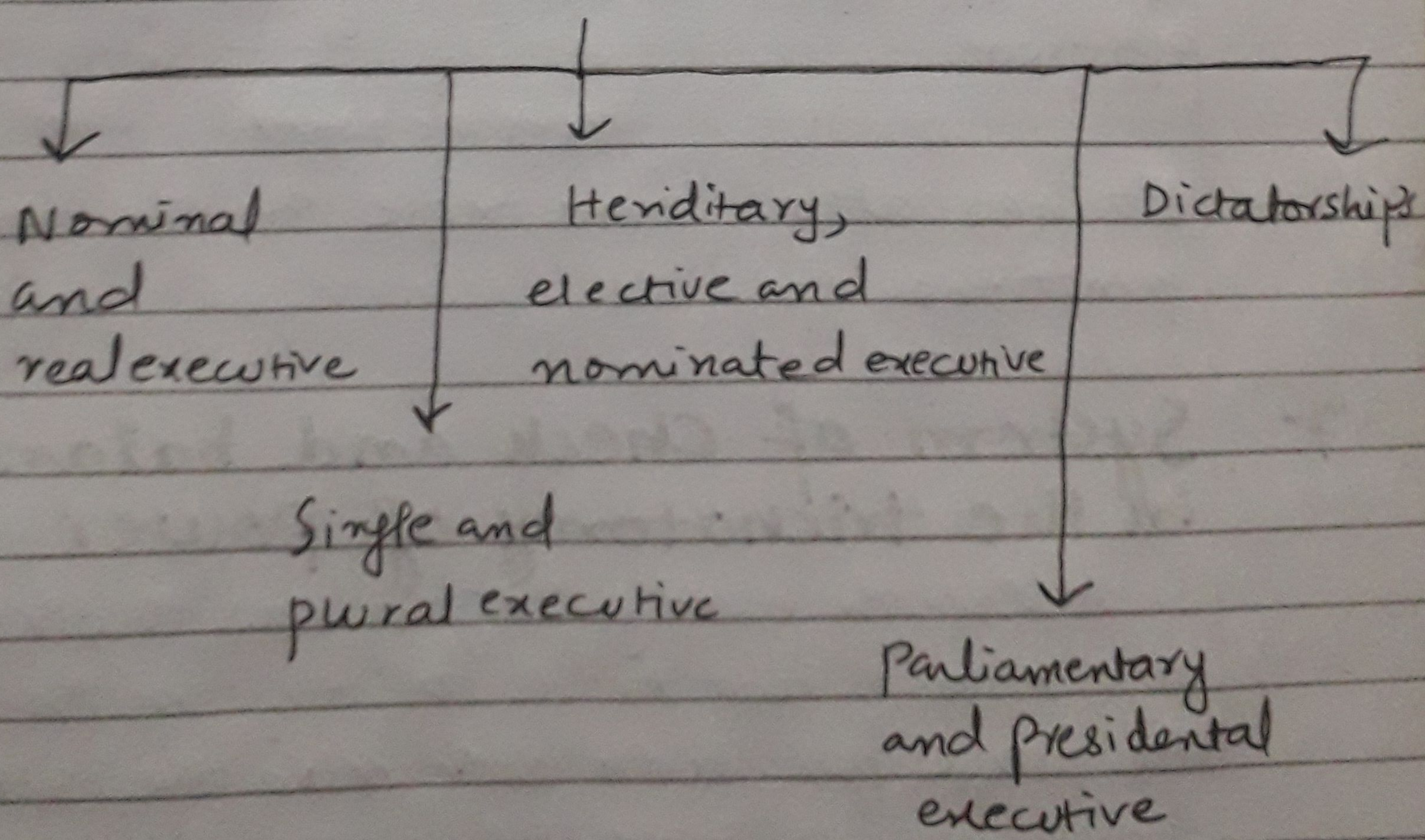
5.1 Functions of Executive

There are various functions of executive in state

- 5.1.1 To maintain law and order in state
- 5.1.2 It makes appointment and gives directions

- S.1.3 It has role in the military functions of state.
- S.1.4 It has role in the diplomatic functions of state.
- S.1.5 It has legislative power.
- S.1.6 It has role in financial functions.
- S.1.7 It has judicial power.
- S.1.8 It is involved in administrative justice.
- S.1.9 It has also some other miscellaneous functions.

5.2 Types of Executive



6- Judiciary:

Judiciary is the ^{third} organ of government. It has also important function to perform in the state.

6.1 Functions of Judiciary:

- 6.1.1 It has role in the settlement of disputes.
- 6.1.2 It has the function to do interpretation of law.
- 6.1.3 It has role in preventing the violation of rights or threatened infringement of the law.
- 6.1.4 It has the power of judicial review
- 6.1.5 It has role in some of the advisory opinions.
- 6.1.6 It has also some role in the non-judicial functions.

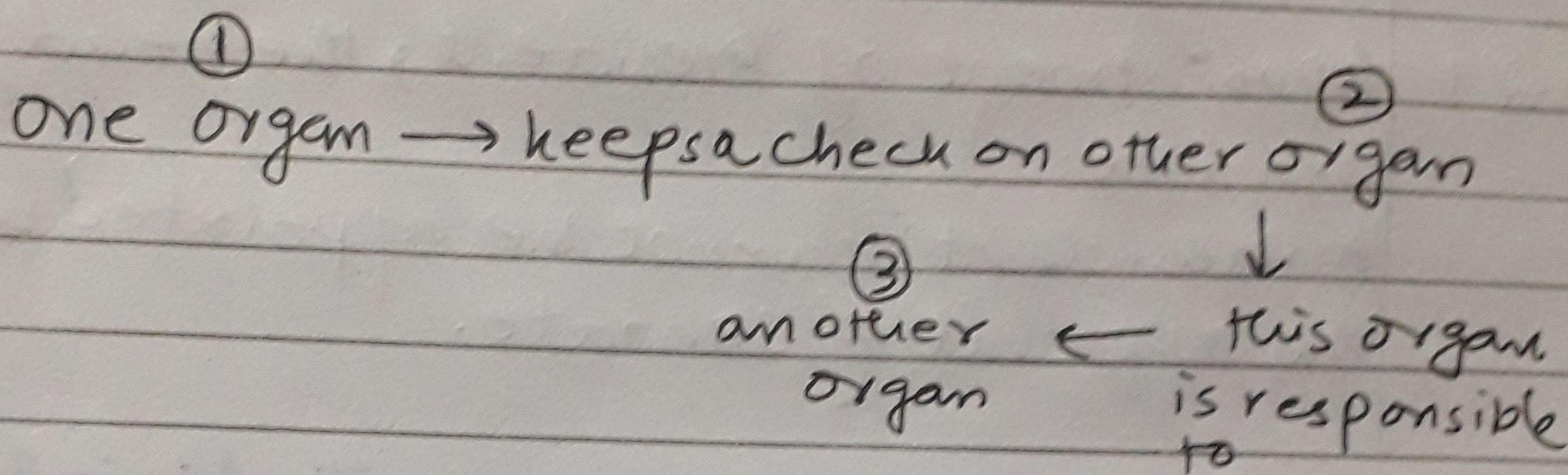
7- System of Check and balances in the trichotomy of Power

Although every organ has their own power and functions to perform in state. The basic function is to run the state efficiently by protecting the liberty, life, property and respect of every individual which are fundamental rights of every citizen.

7.1

Doctrine of separation of power

This is a system of check and balance to avoid tyranny and abuse of power. The doctrine is adopted in the light of the fact that a single institution holding all the power may act arbitrarily as it would not be accountable to anyone for its actions.



7.2

Checks and balances of the legislative branch over Executive branch.

7.2.1

The president has the power in legislative functions. No bill can become the law until chief executive e.g. King or prince approve. The King and Queen or president has the power of "veto."

Example:

Legislative branch can override presidential vetoes with a two-third vote.

7.2.2

The president is head of state and has various powers and functions.

Example

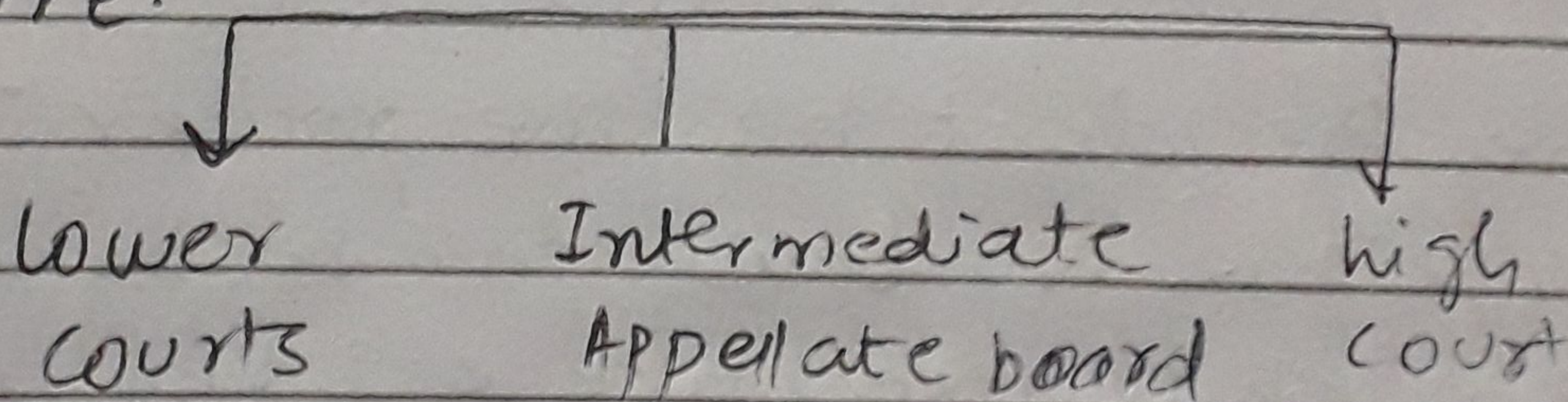
Legislature can remove president through impeachment.

7.2.3 President/Executive has role in the diplomatic functions. His diplomatic representatives conduct negotiations for various treaties e.g. defence, friendship, commercial etc.
 Example:
 He cannot finalize any treaty before the approval of Senate.

7.2.4 Appointment of President, the head of state
 Example:
 A president cannot be appointed without the approval of Senate.

7.3 Legislative Checks on Judicial Branch

7.3.1 The Judicial branch has a certain hierarchical structure.



Example:
 Legislative creates lower courts to have a check and balance

7.3.2 The judicial branch consists of judges who used to give decisions.

Example:
 Legislature can remove judge through impeachment.

7.3.3 Appointment of Judges in Judicial branch by Executive
 Example:

Senate approves the appointment of judges done by president.

7.3 Executive branch check and balances over legislative branch:

7.3.1 The president, King, Queen has the veto power.

Example:

Legislature cannot approve any bill without the approval and signature of president to form a law.

7.3.2 Legislature have various functions and conduct their sessions.

Example:

The president has ability to call special sessions of cabinet.

7.3.3 The role of legislative branch is to make laws.

Example:

President has the power to recommend legislation.

7.4 Executive branch check and balances over judicial branch:

7.4.1 Judicial Branch has the power to interpret the laws by judges in the courts.

Example:

The president appoints Supreme Court and

Date _____

Other federal court judges

7.5 Checks and balances of judicial branch over legislative branch:

7.5.1 The judicial branch has the power to interpret laws
Courts can judge legislative acts to be unconstitutional

7.6 Checks and balances of judicial branch over executive branch

7.6.2 The executive branch makes appointments of various judges

Example:

The judges who are once appointed for life, are free from controls from the executive branch

8 Conclusion:

As evident from the above examples, that tripartite system of power must have checks and balances, which are mentioned above for a government to work well and can safeguard the rights of citizens of the state.

Section- B

(2 Nos) Discuss the major issues of balance of powers between executive, legislative and judiciary and devolution of power in Pakistan in 1973 Constitution of Pakistan.

1- Introduction:

The Constitution of Pakistan, also known as the 1973 Constitution. It is the Supreme Law of Pakistan. This document guides pertinent to laws, fundamental rights, law and order, culture, structure, establishment of institutions, armed forces etc. It was drafted by the government of Zulfikar Ali Bhutto with additional assistance from the opposition parties of that time. It was approved by 5th parliament on 10th April and ratified on 14th August 1973. Till now Pakistan is following the Constitution of 1973 as the Supreme Law of the state.

2- Timeline of Constitution

Constitution of 1956



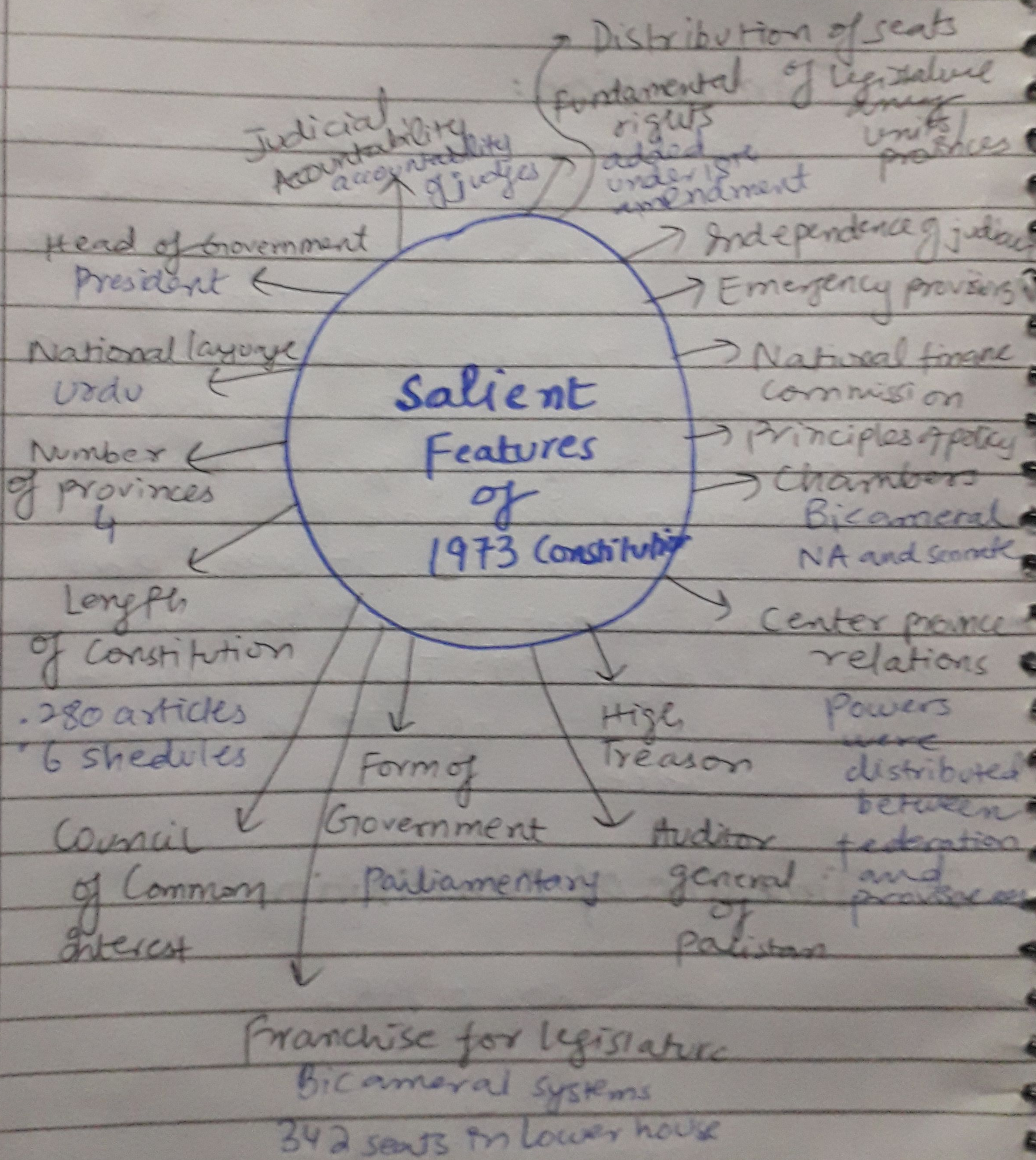
Constitution of 1962



Constitution of 1973 ✓ currently,
following this

3- Salient features of 1973 Constitution

Following are salient features of 1973 Constitution presented for forming mind maps.



4- Trias politica

The Government of Pakistan has three major organs to run the state.

① Legislature

② Executive

③ Judiciary

These three work separately with system of check and balances.

5- Doctrine of separation of powers:

This is a system of check and balance to avoid tyranny and abuse of power. The doctrine is adopted in the light of the fact that a single institution holding all the power may act arbitrarily as it would not be accountable to anyone for its actions.

6- Major Issues of Balance of Power in 1973 Constitution:

In Pakistan, the concept of separation of powers could not find its place accurately.

6.1 Svo moto power

This is the power that is confined within the hands of judicial branch. The judges or the judiciary has the power to pronounce upon the recent decision of the legislature and executive, according to article 184(3) of 1973 constitution.

6.2

Independence of Judiciary:

Judiciary was kept independent of the executive. Therefore the executive branch do not have check and balance on judiciary.

6.3

Judicial Accountability:

Under the article 209 of 1973 Constitution, the Supreme judicial council, a body comprising exclusively of judges is responsible for accountability of judges. If the judges will do their accountability themselves, then their cannot be accurate findings.

6.4

Presidential power to dissolve the Parliament:

It was the power enacted by president to dissolve the parliament. Later on removed.

6.5

Judicial Activism

The judicial activism more or less a new challenge for the democracy of Pakistan. As there are 1.8 million cases pending. The history of judicial verdicts is free from biasness.

6.5

Prime Minister has powers

Through 1973 constitution, the PM was made powerful or through different amendments. There must be a system of check & balances

Date: _____

6.6 Superiority of Legislature

Legislature makes law. No law can be approved without approval of president. But still if won by 2/3rd majority or the mechanism is there to nullify the veto power.

6.7 The involvement of Army according to Zia's regime:

If not control the situation crisis at time, there can be involvement of the establishment, this is somehow problematic for the Pakistan.

7 Conclusion:

There are some major problems in the separation of power in constitution of 1973. Still, there is need to work upon this. But practically, its not possible to fully implement the system of separation of power.