Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

28th Sept - 4th October, 2026

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1.A Confession Is Not Satisfaction: Article 22 Polices the Preventive State

Topic 1 · Constitutional Law — Fundamental Rights; Preventive Detention (Art. 22)

Mulla Afroz v. Union of India (2026) Preventive detention — liberty curtailed not for what a person did but for what he might do — met its constitutional discipline. The alleged 'mastermind' of the November 2024 Sambhal violence, arrested weeks after the incident and then granted bail by the High Court, was met with a detention order under **Section 3 of the National Security Act, 1980**, resting on a confession allegedly made in police custody. A Bench of Justice Dipankar Datta and Justice Sheel Nagu quashed the detention (2026 INSC 1067).

The principle strikes at the foundation of the detaining power: a **custodial confession cannot, by itself and without independent corroborative material, found the subjective satisfaction** that preventive detention demands. The subjective satisfaction of the District Magistrate is the Constitution's substitute for a trial — and a satisfaction built on nothing but a statement to the police, with **no application of mind to the surrounding circumstances**, is no satisfaction in law.

The sequence disclosed the deeper vice: detention followed on the heels of bail — the preventive power deployed to **nullify a judicial order of release**. The Court's response was unusually sharp: not only were the detention order and the High Court judgment upholding it set aside, but **exemplary costs of ₹10 lakh** were imposed on the State Government for the illegal detention.

2.The Reverse Burden Waits for the Prosecution: Foundational Facts First

Topic 2 · Law of Crimes — Statutory Offences; Reverse Onus & Mens Rea

Saurabh Bajaj v. State of Chhattisgarh (2026) How does a **reverse-onus clause** in a penal statute interact with the presumption of innocence? Six accused, transporting 32 bullocks by truck towards Odisha, stood convicted under **Section 6 of the Chhattisgarh Agricultural Cattle Preservation Act, 2004** — transport for the purpose of slaughter — largely because they carried no transport documents. A Bench of Justice J.B. Pardiwala and Justice K. Vinod Chandran set the convictions aside (2026 INSC 1076).

The structure of proof is sequential, not circular: the statute's reverse burden (Section 11) **operates only after the prosecution first establishes the foundational ingredients of the offence** — here, that the transport was *for slaughter*. The State cannot begin at the presumption and reason backwards to the crime: a reverse-onus clause redistributes the burden on an element, it does not dispense with the prosecution's case.

The **absence of transport documents raises no presumption of an intent to slaughter**: want of documentation attracts consequences under the statutes that require the documents, not an automatic inference of the gravest purpose the penal Act contemplates. The veterinary evidence pointed the other way — the cattle were agriculturally fit.

3.Notice Despatched Is Notice Given: Section 138's Machinery Read Commercially

Topic 3 · Contracts & Mercantile Law — Negotiable Instruments Act; s.138 Notice

Sainaba v. State of Kerala (2026) The **Negotiable Instruments Act's dishonour offence** turned on a question every cheque case asks: when is the statutory notice 'given'? A ₹3 lakh cheque bounced; the demand notice, sent by registered post to the drawer's correct address, was received by his mother; the High Court acquitted for want of personal service. A Bench of Justice Ahsanuddin Amanullah and Justice Manmohan restored the conviction (2026 INSC 1069).

The holding re-centres the statutory scheme: **'giving of notice' under Section 138(b) is complete upon despatch to the drawer's correct address.** Once despatch to the correct address is proved, **Section 27 of the General Clauses Act** raises the rebuttable presumption of due service — and the burden shifts to the drawer to show the address was wrong or the notice never reached his knowledge. Receipt by a family member at the address does not defeat the presumption; it illustrates it.

The Court applied the three-judge authority of ***C.C. Alavi Haji v. Palapetty Muhammed** — *the drawer who, within 15 days of receiving the summons, still does not pay can hardly complain of the notice — and declared the contrary view in* M.D. Thomas v. P.S. Jaleel *per incuriam**.

The commercial logic is the provision's whole purpose: Section 138 was enacted to give the cheque the credibility of currency, and a construction that lets the evasive drawer defeat the

offence by **declining to collect his post** would reward the very conduct the statute penalises — the law of negotiable instruments protects the instrument's holder, not the addressee's artifice.

4.The State Cannot Recover by Ambush: Natural Justice in the Running Bill

Topic 4 · Administrative Law — Natural Justice; the State in Contract

Awadhesh Singh Gautam v. State of Chhattisgarh (2026) Natural justice followed the State into its contracts. An audit of a road contractor's earlier PMGSY works alleged overpayment of ₹2.01 crore; the State's response was self-help — it unilaterally withheld ₹84.17 lakh from the contractor's running bills under **three unrelated ongoing contracts**, without notice, without hearing. A Bench of Justice P.S. Narasimha and Justice Alok Aradhe quashed the recovery (2026 INSC 1072).

The contract itself condemned the shortcut: the only clause permitting recovery required an **opportunity to the contractor to explain**, approval of the competent authority, and recovery from the dues of the **same audited work**. Cross-contract recovery, without consent and without hearing, violated both the bargain and the **audi alteram partem** rule — an administrative deduction is still an administrative act, and the State's commercial hat does not excuse its constitutional one.

The maintainability holding carries the doctrine: on the ***ABL International** *line, the writ court may review State action even in the contractual field** where the action is arbitrary or violative of natural justice — the State in contract remains the State under Article 14, and a public authority's set-off is judicially reviewable where it is unilateral and unheard.

The relief was complete — recovery quashed, amounts to be released with interest. For administrative law the case is a working specimen of the **emerging trend**: natural justice attaching not to formal adjudications alone but to every exercise of public power that takes first and asks later.

5.Vishaka's Unfinished Business: The Woman Advocate Outside the POSH Act

Topic 5 · Contemporary Legal Developments — PIL; Women's Dignity at the Workplace

Seema Joshi v. Bar Council of India (2026) A **regulatory vacuum in women's workplace protection** came before the Court by way of public interest litigation: the **POSH Act, 2013** is built on the employer–employee relationship — and a woman advocate practising in the courts has no employer. The Bombay High Court had held the Act covers the employees of Bar Councils and Bar Associations, but not the advocates themselves. A Bench of Justice B.V. Nagarathna and Justice A.G. Masih took the gap seriously (1 October 2026).

The Court held the statute cannot be applied **"in a straitjacket"** to the legal profession's own structure: forcing the advocate into the Act's employment categories distorts both. But the absence of the statute cannot mean the absence of protection — the constitutional guarantee of

a **dignified and safe working environment** under Articles 14, 15 and 21 does not pause at the courtroom door.

The remedial technique is *Vishaka*'s own: where the legislature has not yet spoken, the Court directs the framework into being. The **Union Government and the Bar Council of India** were directed to consult stakeholders and frame comprehensive regulations for the redressal of sexual-harassment complaints of women lawyers practising before the High Courts, district and taluka courts, tribunals and quasi-judicial authorities.

The judgment extends a quarter-century arc — *Vishaka* filled the statutory void in 1997, the POSH Act occupied it in 2013, and the Court now polices the territory the Act left out: the profession that argues everyone else's workplace rights acquiring, at last, machinery for its own.

6.Fourteen Years of Mandamus: The Road-Safety PIL Turns to Enforcement

Topic 6 · Constitutional Law — PIL; Continuing Mandamus

S. Rajaseekaran v. Union of India (2026) The Court's longest-running **road-safety PIL** — instituted in 2012 by an orthopaedic surgeon, monitored ever since — produced its most muscular directions yet. Noting that of roughly ₹49,194 crore in traffic e-challans issued, **over ₹23,000 crore remains unrecovered**, a Bench of Justice J.B. Pardiwala and Justice K.V. Viswanathan ordered the enforcement machinery into motion (order of 28 September 2026).

The directions are concrete: States and Union Territories are to **impound vehicles with dishonoured e-challans** detected in random checks, **freeze online vehicle services** — transfer of ownership, fitness, pollution certification, licence renewal — for defaulters, and **blacklist defaulting vehicles** on the Parivahan portal; road agencies are to make electronic enforcement **AI-enabled** to detect the twelve violation categories under Rule 167A(3) of the Central Motor Vehicles Rules.

The doctrinal engine is **continuing mandamus** — the PIL technique by which the Court retains seisin of a systemic failure and administers the remedy in instalments, each hearing auditing the last order's compliance. Fourteen years of *Rajaseekaran* have produced the road-safety protocols, the Motor Vehicles Amendment's enforcement architecture, and now its digital teeth.

For the law of public interest litigation the order is the genre in mature form: **Article 21's guarantee against arbitrary deprivation of life** translated, through sustained judicial supervision, into patrolling, cameras and consequences — the epistolary jurisdiction grown into an administration of its own, with all the promise and the separation-of-powers unease that implies.

7.When Two Vetoes Deny the Law Exists: The Assembly Audits the Council

Topic 7 · International Law — United Nations; the Veto and Its Audit

On 1 October 2026 the General Assembly held the mandatory debate under **Resolution 76/262 — the 'veto initiative'** — on the Russia–China double veto of 17 September, which killed a

draft renewing the **Panel of Experts** monitoring the revived Iran sanctions regime ahead of its expiry. Eleven members had voted in favour; the Panel — the Council's fact-finding arm for the 1737 Committee — now lapses with the Committee itself paralysed.

Beneath the veto lies a dispute unprecedented in Security Council practice: whether the law being monitored **exists at all**. The E3's 2025 **'snapback'** under Resolution 2231 purported to revive the pre-2015 sanctions resolutions automatically and veto-proof; the EU told the Assembly the reinstated resolutions bind every member under **Article 25**; Russia, China and Iran maintain the snapback was procedurally invalid and the resolutions remain terminated. Two permanent members thus assert that measures most of the membership treats as binding law simply are not.

The institutional problem is the absence of an umpire: as the *Namibia* Advisory Opinion and *Lockerbie* history show, there is **no judicial review of Security Council resolutions** — each organ, and in practice each State, interprets for itself. The veto-initiative debate, born of the Ukraine veto of 2022, is the only standing audit: automatic, public, and purely recommendatory — the Assembly's **Article 10** competence deployed as accountability theatre with real reputational stakes.

Core legal tension: who decides the validity of Security Council law when the permanent members themselves divide — and whether the veto initiative's soft scrutiny is the beginning of Charter reform or a substitute for it; the sanctions regime survives on paper, but its verification machinery is dead, and the Council's own members cannot agree on what its resolutions say.

8.No Limits Left: The Assembly Confronts an Uncapped Nuclear Age

Topic 8 · International Law — Nuclear Weapons; NPT & CTBT

On 29 September 2026 the General Assembly convened its high-level plenary for the **International Day for the Total Elimination of Nuclear Weapons** — in the bleakest legal landscape in two generations. The Secretary-General put the central fact plainly: with the lapse of **New START on 5 February 2026** and no successor negotiated, **"for the first time in more than half a century, there are no binding limits on strategic nuclear arsenals"** — the first legally uncapped strategic environment since SALT I in 1972.

His legal framing was deliberate: **"Disarmament is not a favour. It is a binding legal obligation spelled out in the Treaty on the Non-Proliferation of Nuclear Weapons."** That tracks the ICJ's unanimous dictum in the 1996 *Nuclear Weapons* Advisory Opinion: **Article VI of the NPT** obliges States not merely to pursue but to **conclude** negotiations on nuclear disarmament — an obligation of result. The Marshall Islands cases of 2016 showed the obligation's enforcement problem; the present moment shows its breach problem.

The surrounding architecture is equally stalled: the **CTBT** remains hostage to its Article XIV entry-into-force list, observed meanwhile as a signatory moratorium resting on the **Article 18 VCLT** interim obligation; the **TPNW** divides the room between the ban's parties and the deterrence States; and with INF, Open Skies and now New START gone, the restraint on use

rests on the 81-year 'tradition' of non-use — practice whose status as **opinio juris** or mere prudence is the discipline's oldest open question.

Question: whether Article VI, fortified by the 1996 Advisory Opinion, generates an enforceable obligation to negotiate a successor to New START — and who could invoke it, on *Barcelona Traction* and *Belgium v. Senegal* erga omnes reasoning — or whether, with every bilateral instrument expired, the legality of the nuclear order now rests on nothing firmer than habit.

Weekly Focus

Tej Prakash Pathak & Ors. v. Rajasthan High Court & Ors., [2024] 12 S.C.R. 28 : 2024 INSC 847

Facts: The Rajasthan High Court, recruiting translators, imposed a **75% cut-off after the written examination was over** — a benchmark nowhere in the advertisement — and declared only three of twenty-one candidates successful. A three-Judge Bench in 2013 doubted whether *K. Manjusree v. State of A.P.* (2008) — which forbids changing selection criteria after the process begins — was consistent with *State of Haryana v. Subash Chander Marwaha* (1973), and referred the matter. A **five-Judge Constitution Bench** (Chandrachud CJI, Hrishikesh Roy, Narasimha, Pankaj Mithal and Manoj Misra, JJ) answered on 7 November 2024.

Question of Law: (i) When does the recruitment process commence and end? (ii) What is the constitutional **basis of the 'rules of the game' doctrine**? (iii) Is *K. Manjusree* at variance with *Subash Chander Marwaha*? (iv) May recruiting bodies devise their own procedures to conclude a selection? (v) Can the procedure in extant statutory Rules be departed from? (vi) Does placement in the select list confer a right to appointment?

Decision: Recruitment **begins with the advertisement and ends with the filling of notified vacancies**. **Eligibility criteria notified at the commencement cannot be changed midway** unless the extant Rules or the advertisement (consistent with those Rules) permit — and even a permitted change must independently satisfy **Article 14's test of non-arbitrariness**. *K. Manjusree* **lays down good law**: it does not forbid benchmarks, it forbids setting them **"after the game has already been played"** — and it governs the right to be *placed in* the select list, while *Marwaha* governs the right to be *appointed from* it; the two decide different questions. Recruiting bodies may devise procedures to complete a selection, provided they are transparent, non-arbitrary and rationally connected to the object; **extant statutory Rules bind absolutely**, administrative instructions filling only their gaps.

Ratio: The rules-of-the-game doctrine is **"predicated on the rule against arbitrariness enshrined in Article 14"** — Article 16 being a species of Article 14's genus of equality — and on the **legitimate expectation** of candidates that selection will be fair, transparent and non-arbitrary. Legitimate expectation yields to compelling public interest, but the burden of justification lies on the State: a candidate in the select list holds **no indefeasible right to appointment**, yet the State **"cannot arbitrarily deny appointment to a selected candidate"** and must justify any refusal to appoint from the list.

Legal Significance: The decision is now the **governing authority on changing recruitment criteria mid-process** — the charter cited in every answer-key, cut-off and eligibility dispute. It harmonises three decades of service-law precedent into one Article 14 framework: the advertisement as the covenant of the competition, statutory Rules as its boundary, and arbitrariness review as its audit — the constitutional law of the examination hall in which every public recruitment in India is now conducted.

PYQ Solution

"The Constitution tolerates preventive detention, but only within the strict discipline of its own safeguards." Examine the constitutional safeguards against preventive detention under Article 22 and the judicial approach to their enforcement. (15 MARKS)

Preventive detention — deprivation of liberty on suspicion of future conduct, without charge or trial — was given constitutional status by the framers to protect the infant Republic from subversion; but recognising its harshness, they **"placed fetters on the legislative power"** through Articles 21 and 22. The jurisprudence since is a single sustained effort to keep the exception from devouring the rule.

The safeguards and their enforcement

1. **The constitutional scheme — Art. 22(4)–(7):** The protections of Article 22(1)–(2) — counsel, magistrate within 24 hours — are **expressly withdrawn** for preventive detention; in their place stand the structural safeguards: detention beyond **three months requires an Advisory Board** of persons qualified to be High Court Judges; the detenu must be **communicated the grounds** and afforded the **earliest opportunity of representation** (Art. 22(5)). The 44th Amendment's reforms — a two-month limit, sitting-Judge boards — were never brought into force and remain, as *A.K. Roy v. Union of India* lamented, a **dead letter**.

2. **Strict construction and meticulous compliance:** Any law depriving liberty, **"whether providing for punitive or preventive detention, must be strictly construed"** (*Kishori Mohan Bera*); those who detain **"must strictly and scrupulously observe the forms and rules of the law"** (*Ram Narayan*), and preventive detention demands **"meticulous compliance with the procedural safeguards"** (*Chaya Ghoshal*). Where the prescribed procedure has not in fact been followed, **the detenu must be set free** — the writ of habeas corpus enforcing the safeguards without inquiry into the merits of the apprehension.

3. **Subjective satisfaction, objectively policed:** The detaining authority's 'subjective satisfaction' is not beyond review: *Khudiram Das* located **procedural reasonableness and natural justice within Article 22(5) itself**, and the courts vitiate detention for **non-application of mind** — stale incidents, extraneous grounds, mechanical reliance on the police dossier, or a solitary custodial confession unsupported by independent material.

The satisfaction must be the authority's own, formed on relevant material rationally probative of the future prejudicial conduct.

4. **The widening gates of review:** Judicial control now operates at every stage: the **law itself** may be challenged for legislative competence or contravention of Article 22 (*A.K. Roy*); the **order** may be struck down even at the **pre-execution stage** where it is patently illegal (*Deepak Bajaj*); delay in deciding the representation, or failure to place relevant material before the Advisory Board, vitiates the continuation. The Board's review is the Constitution's substitute for trial — and the courts guard its integrity accordingly.

The current application: The doctrine is in active service: this very week the Supreme Court quashed an NSA detention founded solely on a custodial confession, imposed exemplary costs on the State, and condemned the use of preventive detention to **circumvent a judicial grant of bail** — the ordinary criminal law, not the preventive power, is the Constitution's chosen instrument against past offences.

Conclusion: Article 22 embodies a wager — that an extraordinary power can be caged by procedure. The case law keeps the wager honest: preventive detention survives in the Constitution, but every presumption runs against the detainer, every safeguard is mandatory, and every breach, however formal, opens the prison door.

De Facto IAS