Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

31st August - 6th Sept, 2026

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1.Federalism at Sea: The State Ends at Territorial Waters, the EEZ Is the Union's

Topic 1 · Constitutional Law — Federalism; Distribution of Powers; Art. 19(1)(g)

Fisherman Care v. Government of India (2026) The **maritime distribution of regulatory power** between the Union and the States decided this dispute: may purse-seine fishermen — whose gear Tamil Nadu bans in its territorial waters — transit those waters to fish in the **Exclusive Economic Zone**, which the Union regulates? A Bench of Justice P.S. Narasimha and Justice Alok Aradhe held they may (2026 INSC 937).

The Court mapped the **"distinct regulatory provinces"**: under the Maritime Zones Act, 1976 and the Union's EEZ Fisheries Rules, 2025, the **State's power ends at the territorial waters**, and the **EEZ is the Union's regulatory domain** — the Tamil Nadu Marine Fishing Regulation Act cannot project its purse-seine ban beyond the twelve-mile limit. And where the two regimes meet, **"it is necessary for the Union and the State to abide by the principle of cooperative federalism"**: the State must designate a transit channel through which EEZ-bound vessels pass.

The judgment's administrative-law edge is equally sharp: Tamil Nadu had granted **six access passes out of 257 applications** — inaction the Court held **"virtually amounts to imposing an unwritten ban, which is impermissible in law."** What the State cannot do directly by legislation beyond its waters, it

cannot do indirectly by sitting on applications; the fishermen's occupation under **Article 19(1)(g)** cannot be defeated by administrative attrition.

The decision is a working chart of **federalism offshore**: legislative competence divided by maritime geography, cooperative federalism as the bridge across the line, and indirect frustration of a fundamental right treated exactly as its direct denial would be.

2.Training Wheels, Not the Pilot's Seat: AI-Invented Citations Vitiate an Order

Topic 2 · Administrative Law — Natural Justice; also Contemporary (IT/AI)

Vijay Ghanshyam Gadiya v. Union of India (2026) A **₹425.27-crore customs penalty** fell because the adjudicating authority's order rested on authorities that do not exist. A Bench of Justice Dipankar Datta and Justice Sheel Nagu found the Additional Commissioner had **"relied upon case laws that are either non-existent or have fake citations"** — and that some cited rulings "do not lay down the ratio deduced therefrom and it appears to be a **hallucination of AI**" (2026 INSC 947).

The consequence was structural, not cosmetic: an adjudicatory order must rest on the **adjudicator's own application of mind to verified authority**, and reliance on fabricated material vitiates the order for breach of **natural justice and procedural fairness** — the affected party has never had the chance to meet authorities that exist nowhere. Both the order-in-original and the High Court judgment upholding it were quashed, with the matter remitted to a **different officer.**

On the use of artificial intelligence in adjudication the Court was aphoristic: **"AI may well serve as training wheels but entrusting it with the pilot's seat would be both imprudent and dangerous."** Technology may assist research; it cannot substitute for the decision-maker's verification and reasoning — the duty to decide is personal to the authority on whom the statute confers it.

The judgment extends to the executive the discipline the Court set for tribunals in the *Pooja Ramesh Singh* line: whether the decision-maker is a court, a tribunal or a customs officer, **even a trace of fabricated material in the decisional process poisons the decision** — a natural-justice rule for the age of machine-generated text.

3.No Power by Directive: The BCI Cannot Discipline Law Students

Topic 3 · Administrative Law — Ultra Vires; Limits of Statutory Power

Mihira Sood v. Bar Council of India (2026) The doctrine of **ultra vires** met a high-profile test: after a student campaign at NALSAR drew the Bar Council of India Chairman's ire, his communications directed State Bar Councils **not to enrol the university's 2026 graduating batch.** A three-Judge Bench of Chief Justice Surya Kant, Justice Joymalya Bagchi and Justice V. Mohana declared the directions **"without any authority of law."**

The Court held that the Advocates Act, 1961 **"does not confer any express or implied power upon the BCI… to take any disciplinary action against the students"**: the Bar Councils' disciplinary jurisdiction begins **only upon enrolment as an advocate**, while the discipline of students belongs to the university and its institutional regulator. A statutory body holds only the powers its statute confers — jurisdiction cannot be **assumed by circular or asserted by directive.**

The Court accordingly shielded the students and faculty from punitive action. The unstated constitutional undertone — that the campaign which provoked the directions was **expression**, and a regulator's displeasure is not a ground of power — reinforces the holding: statutory authority is defined by the Act, not by the authority's estimation of its own supervisory reach.

The decision is the term's cleanest statement of the first principle of administrative law: **every exercise of public power must trace to a source in law**, and where the trace fails, the action falls — whoever the actor and however eminent the office.

4.The Other Edge of Implied Powers: A Regulator's Incidental Authority Upheld

Topic 4 · Administrative Law — Incidental & Implied Powers

National Council for Teacher Education v. Association of NCTE Approved Colleges (2026) Two days after denying the Bar Council an implied power, the same term's jurisprudence showed the doctrine's other edge: the Supreme Court **upheld the NCTE's demand for annual Performance Appraisal Reports** (with process fees) from Teacher Education Institutes, though no provision of the NCTE Act, 1993 expressly mandates them. A Bench of Justice P.S. Narasimha and Justice Alok Aradhe reversed the Delhi High Court and declared the 2019 public notice **legal and valid** (2026 INSC 953).

The Court found **"ample empowerment"**: a regulator's power to demand accountability from the institutions it supervises is **incidental and ancillary to its express statutory functions** — the maintenance of standards in teacher education. What the statute commits to a body in substance, the body may implement in method; the process fee, likewise, is incidental to the statutory function it services.

The caution ran to the courts themselves: constitutional courts **"must not take a pedantic view that impairs a regulator's statutory duties."** Judicial review polices the outer boundary of power; it does not parse a regulator's toolkit clause by clause where the function itself is squarely conferred.

Read with the BCI ruling, the pair states the whole doctrine: **implied powers extend an authority's conferred functions; they never create new jurisdiction over new subjects.** The NCTE regulates institutions — so appraisal of institutions is implied; the Bar Council regulates advocates — so discipline of students is not.

5.An Appeal Cannot Make Things Worse: No Reformation In Peius

Topic 5 · Administrative Law — Natural Justice; Penalties & Mens Rea

M/s Saudi Arabian Airlines v. Union of India (2026) Two doctrines decided this challenge to Foreign Travel Tax penalties: the place of **mens rea in penalty provisions**, and the rule against ***reformatio in peius*** — worsening the position of a party on its own appeal. A Bench of Justice J.B. Pardiwala and Justice Ujjal Bhuyan set aside the penalties in all six instances, with refund and interest (2026 INSC 933).

On the first: the airline had **collected and deposited the tax late** — and the Court held that mere **delay is not "failure to pay."** "Automatic imposition of penalty and exclusion of mens rea are two different things": a penalty provision presumptively responds to **culpable default**, not to every shortfall of punctuality, and the deposit — made with delay but made — negated the statutory trigger.

On the second: the penalty had been **enhanced from ₹12,000 to over ₹71 lakh on remand following the assessee's own appeal.** The Court held that a litigant **cannot be placed in a worse position for availing a statutory remedy** — the use of a legal remedy "should not aggravate the situation of the person availing it." The rule is a facet of **natural justice and equality**: a right of appeal exercised under the threat of aggravation is no right at all.

The judgment supplies two portable principles of the law of administrative penalties: default must ordinarily be **culpable** before it is punishable, and the appellate process exists to **correct the order below, never to punish the appellant for invoking it.**

6.The Indus Award: A Treaty With No Exit Cannot Be Held in 'Abeyance'

Topic 6 · International Law — Treaties (VCLT); International Arbitration

On 31 August 2026, the **Court of Arbitration constituted under the Indus Waters Treaty, 1960** — administered by the Permanent Court of Arbitration — issued its award in the proceedings brought by Pakistan, ruling **unanimously that the Treaty "remains fully in force"** and cannot be unilaterally suspended or terminated. India, which holds the tribunal to be illegally constituted, boycotted the proceedings and maintains its April 2025 'abeyance' of the Treaty.

The award works through the law of treaties: the IWT contains **no exit or suspension clause** — Article XII(4) permits termination only by a **ratified bilateral treaty** — and the tribunal rejected each ground invoked for the abeyance: neither **material breach (VCLT Article 60)** nor **fundamental change of circumstances (Article 62)**, nor security or sovereignty claims, authorises a party to hold a boundary-waters treaty in suspense by declaration. Operationally, the tribunal directed a **pause in construction at the Ratle hydro-electric project** pending design review, barred concreting above a specified level, and required notice of schedule changes.

The competing positions frame a classic problem: Pakistan treats the Treaty as a **self-contained regime** whose Article IX machinery survives political rupture, making the abeyance an internationally wrongful act; India answers that the tribunal **lacked competence from the start** — a parallel Neutral Expert process was seized of the questions — and that the award of a body it never accepted cannot bind it. The award's fate thus turns on the question that haunted the South China Sea decision: the **binding force of arbitration upon a State that denies the arbitrators' very constitution.**

Core legal tension: whether a watercourse treaty with no exit clause can be unilaterally suspended on security or *rebus sic stantibus* grounds — and what an award is worth against a boycotting State in a legal order without a bailiff.

7.Vanuatu v. France: Inviting a P5 State to Court

Topic 7 · International Law — ICJ Jurisdiction; Territory & Law of the Sea

On 1 September 2026, **Vanuatu filed an Application at the International Court of Justice against France**, claiming sovereignty over **Umaenupne (Matthew) and Umaeneg/Leka (Hunter) Islands** and seeking a single maritime boundary between its EEZ and continental shelf and those of France (New Caledonia). France has no optional-clause declaration, so Vanuatu proposes jurisdiction under **Article 38(5) of the Rules of Court — *forum prorogatum***: the case proceeds only if France consents.

The claim stacks three doctrines. On **title**, Vanuatu invokes the law of **decolonization** — that its 1980 independence from the Anglo-French Condominium is incomplete without the islands (UNGA Resolution 1514; *uti possidetis*). On the **maritime plane**, it argues in the alternative that even if French, the uninhabited features are **rocks within Article 121(3) of UNCLOS**, incapable of sustaining human habitation or economic life and so generating **no EEZ or continental shelf** — collapsing France's 200-mile claims from them. France's answer rests on established sovereignty and *effectivités* — and, procedurally, on silence.

***Forum prorogatum* is the long shot the doctrine allows**: consent to jurisdiction may be given after seisin, but acceptances are rare — France itself accepted in *Djibouti v. France* (2008), the exception that proves the rule. Vanuatu's filing is therefore as much a **public-law demarche** as a lawsuit: it places a P5 State in the position of either submitting a decolonization-era dispute to law or visibly declining adjudication.

Core legal tension: whether a small island State can bring the law to bear on a permanent member that has never accepted compulsory jurisdiction — consent as the foundation, and the limit, of international adjudication.

Weekly Focus

In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899, [2023] 15 S.C.R. 1081 : 2023 INSC 1066

Facts: Arbitration agreements are commonly **embedded in substantive contracts**, and the Stamp Act, 1899 imposes duty on 'instruments' and renders unstamped instruments inadmissible in evidence under Section 35. Years of conflicting decisions produced the question: is the **arbitration agreement inside an unstamped or insufficiently stamped contract non-existent, invalid or unenforceable**? The question — the harmonisation of the Arbitration Act, the Stamp Act and the Contract Act — reached a **seven-Judge Bench** (Chandrachud, CJI, Kaul, Khanna, Gavai, Surya Kant, Pardiwala and Misra, JJ) in curative jurisdiction, and was answered on 13 December 2023.

Question of Law: Does non-stamping of the underlying contract render the embedded arbitration agreement **void or unenforceable**? At the **Sections 8 and 11 stage**, may the court examine stamping objections — or is the enquiry confined to the **prima facie existence** of an arbitration agreement, leaving stamping to the arbitral tribunal?

Decision: Unanimously (the Chief Justice for six, Khanna, J. concurring): unstamped or inadequately stamped agreements are **inadmissible in evidence under Section 35 of the Stamp Act, but they are not void, void ab initio, or unenforceable** — non-stamping is a **curable defect**, and the Stamp Act itself prescribes the cure. An objection as to stamping **does not fall for determination under Sections 8 or 11**: the referral court examines only whether the arbitration agreement **prima facie exists**; stamping objections fall **within the ambit of the arbitral tribunal.**

Ratio: The judgment rebuilds the doctrinal foundations. **Admissibility is distinct from validity**: "an agreement can be valid but inadmissible in evidence" — voidness speaks to enforceability, admissibility to what a court may rely upon. The Stamp Act is a **fiscal statute** for revenue, not an instrument for destroying bargains. The Arbitration Act is a **self-contained code**, governed by **arbitral autonomy** and the rule of **minimal judicial interference in Section 5**, in whose light every provision must be construed. Above all, **separability**: the arbitration agreement is **juridically independent of the underlying contract** — it survives the contract's invalidity or termination — and the separability presumption gives effect to **competence-competence**, the tribunal's authority to rule on objections to its own jurisdiction.

Legal Significance: The decision settles a conflict that had unsettled Indian arbitration for a decade, restoring the pro-enforcement architecture of the 1996 Act: referral courts refer, tribunals decide, and fiscal objections cannot stall the arbitral process at the courthouse door. Doctrinally it is now the Indian locus classicus for **separability and competence-competence** — the twin presumptions on which modern arbitration law is built.

PYQ Solution

Define negligence and explain its essential elements. How did Donoghue v. Stevenson determine the circumstances in which a duty of care arises? (15 MARKS)

Negligence is the breach of a **legal duty to take care**, resulting in damage to the person to whom the duty was owed. To succeed, the plaintiff must prove three elements: **(i) the defendant is under a duty to take care; (ii) breach of that duty; and (iii) the breach of the duty of care is the cause of the damage suffered.** Breach and damage are questions of fact; **duty of care is the crucial concept, for it fixes the boundaries of the tort.**

The elements and the neighbour principle

1. **Duty of care — the neighbour principle:** In ***Donoghue v. Stevenson* (1932)**, Lord Atkin translated morality into law: "love your neighbour becomes in law, you must not injure your neighbour… **Who, then, in law is my neighbour?** The answer seems to be — **persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation** as being so affected when I am directing my mind to the acts or omissions which are called in question." Duty thus rests on **reasonable foreseeability of harm** to those proximate to one's conduct.
2. **Breach — the standard of care:** Breach "raises a factual question whether the required standard of conduct has been reached" — the standard of the **reasonable person**, calibrated to the magnitude of the risk and the gravity of the threatened harm. It becomes relevant **"only if a duty of care has been held to exist in law"** — the sequence of the enquiry is duty first, breach second.
3. **Causation and damage:** The breach must be the **cause of the damage** — negligence 'in the air' is not actionable; the plaintiff must connect carelessness to injury. Damage, like breach, "is confined to the enquiry of facts": without proved loss flowing from the breach, the cause of action is incomplete.
4. **The reach of the principle:** The neighbour principle liberated negligence from fixed categories: the manufacturer owes the ultimate consumer a duty though no contract joins them, and the courts have since applied the twin tests of **foreseeability and proximity** to novel relationships — employers and workmen, occupiers and visitors, public authorities and those their functions foreseeably touch.

The design of the tort: The three elements distribute the enquiry: duty (a question of law) polices which relationships attract liability at all; breach (fact) measures conduct against the reasonable standard; causation and damage (fact) tie the wrong to the loss. Together they keep liability for carelessness within principled bounds while letting the category of duty grow with social relations.

Conclusion: Negligence is thus the common law's general theory of accountability for careless harm: a duty defined by foreseeability and proximity, breached by conduct below the reasonable standard, and completed by damage caused thereby — a structure built in *Donoghue v. Stevenson* and elastic enough to govern relationships its authors never imagined.

De Facto IAS