Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

17th - 23rd August, 2026

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1.Nine Judges, One Answer: Bangalore Water Supply Survives

Topic 1 · Constitutional Law — Precedent & Stare Decisis; 'Industry'

State of U.P. v. Jai Bir Singh (2026) Two decades after a five-Judge Bench doubted it, the definition of **'industry' under Section 2(j) of the Industrial Disputes Act, 1947** returned to a **nine-Judge Bench** — and the **'Triple Test' of *Bangalore Water Supply v. A. Rajappa* (1978)** emerged intact (2026 INSC 897). Chief Justice Surya Kant wrote for a plurality of four; Justices Nagarathna, Narasimha, Datta (with Bhuyan) and Bagchi delivered separate opinions.

Five of the nine Judges expressly held that the Triple Test does not require reconsideration — Justice Datta stating flatly that "*Bangalore Water Supply* does not require reconsideration," and Justice Bagchi describing the test as "a rare felicity in judicial interpretation." The plurality essayed a refined formulation — adding that the goods or services must bear "a **discernible commercial character** analogous to trade or business" — but declared its reformulation **"not intended to displace the governing legal position"**: all pending matters under the Act are to be decided by the *Bangalore Water Supply* Triple Test, any refinement operating prospectively.

On the two ancillary questions the Court was unanimous: the **unnotified Industrial Disputes (Amendment) Act, 1982** remains inert — "Courts cannot direct the Government to notify an amendment" — and **Section 2(p) of the Industrial Relations Code, 2020**, in force since November 2025, must be interpreted **independently**, uninfluenced either by *Bangalore Water Supply* or by this judgment. The

sovereign-functions exception stays narrow: the State's welfare and economic activities are not exempt merely because of their public character.

The judgment is as much about the **discipline of precedent** as about labour law: a reference validly made under the *Dawoodi Bohra* framework.

2.A Statute Without an Offence: The U.P. Gangsters Act Held Stillborn

Topic 2 · Law of Crimes — Nulla Poena Sine Lege; Art. 20(1)

Shiv Pratap Singh alias Chinu v. State of U.P. (2026) The maxim ***nulla poena sine lege** — *no punishment without law — received a striking modern application: the Supreme Court held the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 "stillborn", because it defines 'gang' and 'gangster' and prescribes punishment, but nowhere creates an offence** (2026 INSC 894). The Bench comprised Justice J.B. Pardiwala and Justice K. Vinod Chandran.

Article 20(1) and the General Clauses Act define an 'offence' as an act or omission **made punishable by law**; the Gangsters Act punishes only acts already penalised under other statutes, and attaches its stigma to a **status** — that of 'gangster' — determined "on the *ipse dixit* of the administrative officers and police personnel by preparation of a **Gang Chart** under the Rules." The Court held that the **creation of crime "is essentially a legislative function and it cannot be thrown away and left to sprout in the thickets of subordinate legislation"** — the Rules of 2021 exceeded the rule-making power of Section 23.

The contrast with **MCOCA and the Gujarat Control of Terrorism and Organised Crime Act** was decisive: those statutes create a distinct offence of organised crime with its own ingredients; the U.P. Act creates none. Measured even against preventive-detention law, the Act lacks the safeguards that attend detention without trial — under it, conviction becomes "a foregone conclusion, a **statutory imprimatur to punish.**"

The chargesheets under Sections 2/3 were quashed, the underlying IPC prosecutions left untouched, and the Act's constitutionality — upheld decades ago by an Allahabad Full Bench the Court pointedly declined to approve — left formally open. The principle, however, is unmistakable: **a person may be punished only for a defined act or omission, never for an administratively certified status.**

3.The Police Are Not the Investigators: PCPNDT's Exclusive Machinery

Topic 3 · Law of Crimes — Criminal Process under Special Statutes

State of Uttar Pradesh v. Brij Pal Singh (2026) Which agency investigates offences under the **Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994** — the statute that combats sex-selective foeticide? Resolving a sharp conflict among High Courts on a certificate under Article 134-A, the Supreme Court held that the **Appropriate Authority under the Act is the exclusive investigator**: the police "are not meant to be the investigators for the purpose of this Act" (2026 INSC 901; Justice Sanjay Karol, with Justice N. Kotiswar Singh concurring).

Section 27's label 'cognizable' cannot override the specialised scheme of Sections 17(4), 17A, 28 and 30 — reading it as conferring plenary police powers "would be a stretch, and an impermissible one at that." Rule 18A(3)(iv) — that the machinery shall "as far as possible, not involve police" — has **statutory force**, and the discretion to seek police assistance belongs to the Appropriate Authority alone. The special law displaces the general procedure of the CrPC and BNSS (Sections 4–5 of each), in line with *Jeewan Kumar Raut* (TOHO Act) and *Ashok Kumar Sharma* (Drugs and Cosmetics Act).

The consequence is jurisdictional: under **Section 28, the Magistrate "shall not be able to take cognizance upon the filing of a chargesheet"** by the police — a police investigation of a PCPNDT

offence is “nugatory in the eyes of law” because it can never end in valid cognizance. *Lalita Kumari*'s FIR-registration mandate was distinguished as subject to this statutory entry-hurdle.

Justice Kotiswar Singh's concurrence adds a working **dual-track protocol** for mixed cases: information disclosing both IPC/BNS and PCPNDT offences goes to the police only for the former; the PCPNDT component must be transmitted to the Appropriate Authority, and police assistance “shall never be converted into independent police investigation… or culminate into the police chargesheet.” The regulatory design of a protective statute, the Court held, is itself part of its protection.

4.Hanging Survives Constitutional Scrutiny — For Now

Topic 4 · Constitutional Law — Art. 21; Capital Punishment

Rishi Malhotra v. Union of India (2026) A nine-year-old Article 32 petition challenging **death by hanging as the sole mode of executing a capital sentence** — as violative of the **right to die with dignity** read into Article 21 by *Gian Kaur* — was dismissed by a Bench of Justice Vikram Nath and Justice Sandeep Mehta (2026 INSC 873, authored by Mehta, J.).

The controlling precedent held: ***Deena v. Union of India* (1983)**, approved by the Constitution Bench in *Shashi Nayar*, sustains **Section 354(5) CrPC — now Section 393(5) BNSS** — and a two-Judge Bench cannot depart from it “unless it is demonstrated that the view so taken… has been rendered unconstitutional owing to some significant constitutional development, legislative amendment or cogent scientific and empirical evidence.” No such evidence was produced: no **“unimpeachable scientific or empirical evidence”** of a botched judicial hanging in India was shown, while the intervenor's own material recorded numerous botched lethal injections in the United States — no alternative is “demonstrably superior.”

The analogy to the **Army, Navy and Air Force Acts**, which permit shooting, failed: those statutes “operate in a distinct field and govern a separate class of persons.” The **Law Commission's 187th Report is “simply recommendatory”**, and Parliament, re-enacting the provision in the BNSS, consciously retained hanging — the choice of mode of execution being quintessentially a matter of **penal policy for the legislature**, not the courts.

The door was left ajar: dismissal does not “foreclos[e] future constitutional scrutiny, should compelling scientific, medical or empirical evidence emerge,” and the Union remains free to constitute an expert body. The judgment thus maps the boundary between **Article 21 review and separation of powers** in the law of capital punishment — scrutiny is available, but it runs on evidence, not sentiment.

5.Black Money and the Ballot: Article 324 as a Reservoir of Power

Topic 5 · Constitutional Law — Elections; Art. 324

State of Karnataka v. Prathik Parasrampuria (2026) An appeal from the quashing of a single FIR — a ₹20.48 lakh cash seizure during a 2014 bye-election — became the vehicle for **nationwide directions on money power in elections**. Reiterating that **“‘Democracy’ and ‘free and fair election’ are inseparable twins”** and that **Article 324 is “a reservoir of power”** where legislation is silent, a Bench of Justice Sanjay Karol and Justice N. Kotiswar Singh, assisted by amici, issued binding directions to every State, Union Territory and the Election Commission (2026 INSC 868).

The directions discipline the seizure-to-trial pipeline: every election-period seizure of cash or assets must be reported within **24 hours** to the District Magistrate or competent court **with written reasons disclosing the prima facie nexus** between the asset and the suspected electoral offence; investigations into election-related FIRs are to conclude within **one year**, with delays explained to the ECI; **quarterly**

status reports flow to the Commission through nodal officers; and static-surveillance cash finds above ₹10 lakh go to the income-tax authorities.

Two structural directions stand out: High Courts may designate courts for the expeditious trial of cases against candidates, and — extending *Ashwini Kumar Upadhyay* and applying the *K. Ajith* principles on Section 321 CrPC — **no prosecution against a candidate may be withdrawn without High Court approval**, placing candidates on the same protective footing as sitting legislators.

Doctrinally the judgment sits on the line of *Mohinder Singh Gill* and *ADR*: where the RPA and the rules are silent, the Commission's plenary superintendence — reinforced by judicial directions under Articles 32 and 142 — fills the interstices, because **free and fair elections and the rule of law are basic-structure commitments** that cannot wait for legislation.

6.No Premium, No Risk: The Agent Cannot Promise What the Statute Forbids

Topic 6 · Contracts & Mercantile Law — Agency; Insurance

New India Assurance Co. Ltd. v. Louis Dreyfus Commodities India (2026) The interface of **agency law and the statutory embargo of Section 64VB of the Insurance Act, 1938** — no insurer shall assume risk unless the premium is received in advance — decided this consumer appeal. A marine cargo policy's insured turnover stood exhausted months before fire destroyed the insured cotton; the additional premium was paid only weeks **after** the loss; and the insured relied on a Divisional Manager's e-mail assuring continued cover. The NCDRC allowed the claim; the Supreme Court reversed (2026 INSC 876; Justice Sanjay Karol, with a detailed concurrence by Justice N. Kotiswar Singh).

Section 64VB "provides no possibility for post facto regularisation": the endorsement accepting the further premium expressly operated only from the date of payment — after the loss — and **estoppel "cannot apply against or in contravention of a statute."** The insured's reliance on the manager's assurance could not manufacture cover that the statute forbade to exist.

The agency analysis is the judgment's core: an officer's authority to administer or explain a policy **"is not equivalent to authority to rewrite it."** In Justice Kotiswar Singh's words, **"an agent cannot, by invoking actual or ostensible authority, confer upon the insurer a capacity which the statute itself withholds,"** and ratification under Section 196 of the Contract Act "cannot be employed to defeat a mandatory statutory requirement." Applying Section 227, the authorised portion of the e-mail was severed from its unauthorised excess; *Harshad J. Shah* and the burden rule of *Dilawari Exporters* were applied.

The decision aligns the chapters of the syllabus it touches: **ostensible authority (Sections 186–188, 237)** binds the principal within the zone of the agent's apparent power, but neither apparent authority, nor estoppel, nor ratification can operate **contra legem** — commercial reliance ends where a mandatory statute begins.

7.Sanctioning the Bench: The United States Targets the ICC President

Topic 7 · International Law — International Institutions; Immunities

On 18 August 2026, the United States imposed **sanctions on the President of the International Criminal Court, Judge Tomoko Akane of Japan, and a senior trial lawyer**, adding both to the Treasury's SDN list — asset freezes and exclusion from the US financial system — under **Executive Order 14203** and the IEEPA, as part of a declared campaign against the Court. The ICC condemned the measures on 19 August as a **"flagrant attack"** on judicial independence; with these designations, half the Court's judges and its senior prosecutorial leadership stand sanctioned.

The legal frame pits sovereign discretion against institutional protection. The **Rome Statute guarantees the independence of the Court's organs (Article 42)** and clothes its judges and staff with **privileges and immunities (Article 48)**, elaborated in the 2002 Agreement on Privileges and Immunities — to which the United States, a **non-party** to the Statute, is not bound. The designations respond to the Court's exercise of jurisdiction over nationals of non-consenting States, which Washington casts as itself illegitimate.

The competing characterisations are classic: the United States frames the measures as **retorsion** — unfriendly but lawful acts within its own domain, the control of access to its financial system; critics answer that sanctions targeting **judges for their judicial acts** are coercion aimed at an international judicial institution, chilling the **cooperation duties of States Parties (Article 86)**, raising the intervention principle of *Nicaragua*, and pressing on the Court's ability to function at all — against the backdrop of recent withdrawal notifications under **Article 127** by States reportedly under like pressure.

Core legal tension: whether a non-party State's individual sanctions upon the judges of an international court are lawful retorsion within its sovereign discretion, or unlawful coercion directed at the independence of a judicial institution it never consented to — sovereignty against the integrity of international justice.

8.The Nord Stream Diver: Extradition, Functional Immunity and a ‘Just War’ Defence

Topic 8 · International Law — Extradition; Immunities & IHL

On 19 August 2026, Croatian police arrested a Ukrainian national — a trained diver — at Pula on a **German European Arrest Warrant** for the September 2022 **Nord Stream pipeline explosions.** The arrest reopens a question another EU court has already answered the other way: in October 2025 a **Warsaw court refused surrender of the same man**, reasoning that acts in a “just, defensive war” could be legally justified — while Italy, conversely, extradited a co-suspect who now stands charged in Germany.

The extradition frame is the **EU Framework Decision on the European Arrest Warrant**: surrender rests on **mutual recognition (Article 1(2))**, the refusal grounds of Articles 3–4 are exhaustive, and there is **no political-offence exception**; a prior refusal by one member State is not a final judgment and creates no *ne bis in idem* bar — so the Croatian court may lawfully reach the opposite conclusion, exposing the fragility of mutual recognition when member-State courts disagree about the law of war.

The substantive defence stack is where the doctrine lies: if the divers acted as **organs or agents of Ukraine** in its armed conflict with Russia, the acts are attributable to the State (**ARSIWA Articles 4 and 8**), potentially attracting **functional immunity *ratione materiae** *from foreign criminal jurisdiction — the very question at the heart of the ILC's newly adopted draft articles — and, within IHL, the argument that pipelines part-owned by the adversary constituted a military objective (AP I, Article 52(2)). Germany's answer is that ordinary crimes against infrastructure on third States' continental shelves (cf. UNCLOS Article 113*) by individuals enjoy no such shield, and that combatant immunity does not travel to acts against neutral-linked property far from the battlefield.

Core legal tension: whether functional immunity and the law of armed conflict shield individuals who sabotage third-State-linked infrastructure as alleged agents of a belligerent — and whether EU mutual recognition can survive contradictory national answers to that question.

Weekly Focus

Abhiram Singh v. C.D. Commachen (Dead) by Lrs., [2017] 1 S.C.R. 158

Facts: Election petitions alleging the **corrupt practice of appealing to religion under Section 123(3) of the Representation of the People Act, 1951** raised a question that had divided the Court for decades: the provision bars an appeal to vote or refrain from voting "on the ground of **his** religion, race, caste, community or language" — but *whose*? Only the candidate's (and his rival's), or also the **elector's**? The question was referred to a **seven-Judge Bench** (Thakur, CJI, Lokur, Bobde, Goel, Lalit, Chandrachud and Nageswara Rao, JJ), which answered it on 2 January 2017.

Question of Law: Does the word **'his' in Section 123(3)** confine the corrupt practice to appeals invoking the religion (or race, caste, community or language) of the **candidate or his rival**, or does it extend to appeals invoking that of the **voter** — so that any sectarian appeal in the electoral process, whoever's identity is invoked, vitiates the election?

Decision: By a majority of **4:3**, the Court adopted the **broad, purposive construction**: the Act "enables to cherish and strengthen democratic ideals" and must be interpreted "in a manner that assists the elector or the electorate and not that assists the candidates." Read in its social context and alongside the contemporaneous insertion of **Section 123(3A) and Section 153A IPC**, 'his' embraces the religion of **(i) the candidate, (ii) his agent, (iii) any person appealing with the candidate's consent, and (iv) the elector.** Whether an appeal was in fact made, and whether it violates the provision, remains a matter of evidence. The **minority** (per Chandrachud, J.) would have held that a **quasi-criminal provision demands strict, literal construction**: 'his' refers to the candidate or rival alone, and discussion of matters of religion, race, caste, community or language of the voters is protected as an intrinsic part of the freedom of speech.

Ratio: Per Thakur, CJI: an interpretation "which has the effect of **eroding or diluting the constitutional objective of keeping the State and its activities free from religious considerations must be avoided**" — constructions in tune with constitutional ethos are to be preferred. The opinions also stage a classic debate on **interpretation of statutes** — welfare legislation invites purposive reading (Lokur, J.), penal consequences demand strictness (Chandrachud, J.) — and on when a **long-standing interpretation may be unsettled.**

Legal Significance: The decision secularises the electoral appeal comprehensively: a plea to any electorate's **religious, caste, communal or linguistic identity** is now a corrupt practice, whoever's identity is invoked. It entrenches the election as a **secular exercise** within the constitutional scheme, while the closely divided Court preserves, in the minority opinion, the enduring counter-principle that penal consequences must rest on strict construction and that electoral speech about voters' lived identities has a protected core.

PYQ Solution

"The granting of recognition to a new State is not a constitutive but a declaratory act." Examine the theories of recognition of States and distinguish between de jure and de facto recognition. (15 MARKS)

Statehood is defined by the **Montevideo Convention, 1933 (Article 1)**: a permanent population, a defined territory, government, and the capacity to enter into relations with other States. The contested question is what **recognition** by existing States adds — whether it merely acknowledges statehood or constitutes it.

The theories and the distinction

1. **The declaratory theory:** In Brierly's classic statement, recognition **"does not bring into legal existence a State which did not exist before"**: a State may exist without being recognised, and if it exists in fact it is entitled to be treated as a State. Recognition's primary function is to **acknowledge an uncertain fact** — the independence of the claimant entity — and to declare the recognising State's readiness for normal international intercourse.

2. **The constitutive theory:** The rival view treats recognition as a **necessary act before the entity enjoys international personality** — no statehood without acceptance by the existing community. Its difficulty is fundamental: it makes legal existence depend on the **political will of other States**, and yields relativism — an entity would be a State vis-à-vis some States and not others.

3. **Practice and critique:** Brownlie's critique cautions that **'recognition' is not a term of art**: non-recognition is frequently a **political code for hostility** toward an entity that plainly qualifies in law, and the real enquiry is the **intention of the government concerned**, gathered by ordinary legal analysis. The ***Tinoco*** **arbitration** illustrates the point — the effectiveness of a *de facto* government determined its capacity to bind the State, notwithstanding the political non-recognition of several powers.

4. **De jure and de facto recognition:** Recognition may be **de jure** — accepting that the entity **exists as of right** — or merely **de facto** — acknowledging the entity's factual existence while withholding judgment on its **legitimacy.** The distinction chiefly matters within **national legal systems**, where the recognising State's stance conditions the foreign entity's rights, immunities and access to courts.

The limit of the declaratory view: Where an entity's creation is tainted by **illegality** — Manchukuo under Japanese occupation, Rhodesia after the unilateral declaration — the fact of effective existence did not generate statehood: collective **non-recognition of unlawful situations** shows that recognition doctrine cannot be reduced to pure fact-acknowledgment.

Conclusion: Modern practice is predominantly **declaratory** — statehood is tested against the Montevideo criteria, not conferred by acceptance — but tempered by the obligation not to recognise situations created in breach of fundamental norms. Recognition thus remains legally consequential less on the international plane than **before national courts**, where the distinction between de jure and de facto recognition continues to do practical work.

De Facto IAS