Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

12th - 18th October, 2026

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1.₹8,415 Crore Written Down Without Power: Ultra Vires at Its Purest

Topic 1 · Administrative Law — Judicial Review; Ultra Vires

YES Bank Ltd. v. Axis Trustee Services Ltd. (2026) The **doctrine of ultra vires** decided one of the largest administrative-law cases in Indian financial history. In March 2020, during the YES Bank rescue, the statutory **Administrator** appointed under Section 36ACA of the Banking Regulation Act wrote down ₹8,415 crore of Basel-III AT-1 bonds to zero. A Bench of Justice Dipankar Datta and Justice A.G. Masih held the write-down void (2026 INSC 1132).

The sequence condemned the act: the draft reconstruction scheme contained a write-down clause — and the Central Government **deliberately deleted it** from the final notified Scheme after objections. The next day, the Administrator wrote the bonds down anyway. Neither of the two contractual triggers — the bank's own Pre-Specified Trigger or the RBI's Point of Non-Viability — had been exercised.

The principle is the oldest in administrative law: **a power not conferred cannot be exercised — "The Administrator could not have assumed the regulatory role of the RBI and exercise a power which it did not have at all."** A general savings clause cannot source a specific regulatory power; necessity cannot bypass the prescribed method; and administrative action is judged on its **validity as at the date it was taken**, not by later justification.

2.Caste Is Not a Conclusion: Backwardness, Conversion and Article 16(4)

Topic 2 · Constitutional Law — Services; Art. 16(4) Backward Classes

Secretary to the Government of Tamil Nadu v. Sameer Ahmed (2026) Who is a backward class under Article 16(4) — and what happens to the claim upon religious conversion? Tamil Nadu's government order allowed converts to Islam from notified backward communities to obtain 'backward class Muslim' certificates; the Madras High Court struck it down, and a Bench of Justice P.K. Mishra and Justice Shree Chandrashekhar affirmed (2026 INSC 1129).

Two propositions anchor the ruling. First, **mere caste membership is not conclusive proof of social backwardness**: identification under Article 16(4) must examine education, occupation and social standing — caste may begin the inquiry, it cannot end it. Second, **conversion severs a caste-based claim** where the new religion does not practise caste as the basis of social status: the convert does not carry the certificate across; and on reconversion, revival of caste identity requires an independent, fact-specific determination.

The Court engaged *Indra Sawhney* with precision: non-Hindu groups can of course be backward classes — Tamil Nadu itself notifies seven Muslim backward communities — but the Constitution Bench never held that conversion transplants an existing caste-based entitlement. And the Court refused to equate the **Ashraf–Ajlaf–Arzal stratification** among Muslims with the Hindu caste order: importing the caste system into communities organised without it would be "against the Constitution's ethos."

3.A Bribe Is Not an Official Function: Section 17A's Shield Delimited

Topic 3 · Law of Crimes — Prevention of Corruption Act; s.17A

Tejaram v. State of Rajasthan (2026) The **Prevention of Corruption Act's newest shield** — Section 17A, requiring prior approval before any enquiry into offences 'relatable to' a public servant's official functions — met its boundary. A constable allegedly demanded ₹1.5 lakh invoking his superior's name; charged under Section 7, he argued the entire probe was void for want of Section 17A approval. A Bench of Justice S.V.N. Bhatti and Justice N.V. Anjaria dismissed the plea (2026 INSC 1147).

The holding turns on what the Court called the provision's **"decisive phrase"**: the offence must be relatable to a **recommendation made or decision taken in the discharge of official functions or duties**. A naked demand for a bribe satisfies no part of that description — **"demanding a bribe is a pure criminal act"** with no nexus to any official function the law recognises.

Section 17A, the Court held, has no **"omnibus application"**: it protects the honest officer whose bona fide recommendations and decisions might otherwise attract harassment through investigation — it does not wrap every act done in uniform, in office hours, or in the office's name inside an approval requirement. The shield follows the function, not the functionary.

4.Probation Is Not a First Offender's Passport: Reformation Meets Its Limits

Topic 4 · Law of Crimes — Kinds of Punishment; Probation

Umesh Chand v. State of U.P. (2026) The **reformative theory of punishment** has a statutory home — the Probation of Offenders Act — and this appeal fixed its boundary. A shop-rivalry attack with a cutting weapon and a firearm left the victim with lasting disabilities; the trial court imposed five years' rigorous imprisonment under Section 308; the High Court, two decades later, released the convicts on probation citing the years of 'suffering' the litigation had inflicted. A Bench of Justice J.B. Pardiwala and Justice K. Vinod Chandran reversed (2026 INSC 1114).

The principle: **first-offender status alone is not a passport to probation.** Section 4 of the Act demands regard to the circumstances of the case, the **nature of the offence and the character of the offender** — a composite judgment, not a checkbox. Brutality of the attack, the weapons used, and injuries the Court thought answered Section 307 itself, made probation "wholly inappropriate."

The High Court's sympathy rested on a fiction the Supreme Court punctured: the convicts had been **on bail throughout — not a day in custody** — so the twenty-two years of 'suffering' were years of liberty pending appeal. Delay generated by the system cannot be converted into a sentencing discount for the beneficiaries of that delay; surrender within two weeks was directed.

5.Two Venues, One Seat: The Agreement Read Whole

Topic 5 · Contracts & Mercantile Law — Arbitration Act; Seat Determination

Arcis Clean Energy Pvt. Ltd. v. Parshva Innovation (2026) What fixes the **juridical seat** when the arbitration clause itself points two ways? A franchise agreement put the 'precise location' of arbitration in **Delhi** in one sub-clause, said proceedings would be 'held in **Goa**' in the next — and gave **exclusive jurisdiction to the Goa courts** in a separate clause. The Delhi High Court had appointed an arbitrator under Section 11; the Supreme Court set the appointment aside for want of jurisdiction (2026 INSC 1109, decided 12 October).

The holding: where the arbitration clause names two venues, **the clause alone cannot fix the seat — the agreement must be read as a whole**, including the governing-law and exclusive-jurisdiction clauses. On that reading Goa was the seat: the exclusive-jurisdiction clause expressed the parties' real choice of supervisory forum, and the Delhi reference was a 'location' of convenience, not an anchor of law.

The Court rejected the ingenious **separability argument** — that the arbitration clause is an autonomous agreement whose own words alone govern seat. Separability protects the clause's *validity* from the contract's infirmities; it does not quarantine the clause from the contract's *interpretation*. Party intention is gathered from the whole bargain, not one severed paragraph.

The decision extends the *BALCO–BGS SGS Soma* line into the drafting pathology the law reports see most: contracts that say two things. The answer is now structural — **venue is**

where the clause points, seat is what the agreement means — and the Section 34 forum, the curial law and the appellate chain all follow the meaning, not the typo.

6.Digital Safety and Sex Education: Two Sides of the Same Coin

Topic 6 · Contemporary Legal Developments — IT/Cyber Law; Child Protection PIL

Just Rights for Children Alliance v. S. Harish (2026) The Court's landmark 2024 CSEAM judgment acquired its enforcement architecture. In the follow-up proceedings, a Bench of Justice J.B. Pardiwala and Justice K. Vinod Chandran issued **sixteen binding directions** to the Union, the States, child-rights commissions, schools and internet intermediaries (2026 INSC 1149).

The organising principle: **"digital safety and sex education are two sides of the same coin"** — both must enter the core school curriculum. The directions run from age-appropriate body-safety and consent education at the primary stage, through teaching of **grooming, sextortion and data privacy**, to instruction in the POCSO Act itself — including the reporting duties of Sections 19 and 21 — and the IT Act's CSEAM offences. NCERT and SCERTs are to build the curriculum; helplines must be displayed in every school.

The intermediary-facing directions push cyber-law doctrine forward: **warnings on CSEAM-related searches, alerts when a child's account is contacted by an unknown adult**, proportionate content filters on school devices — the platform conscripted into prevention, not merely takedown. Victims receive a right to free, long-term counselling.

7.A Treaty for Crimes Against Humanity: The Last Gap in the Atrocity Canon

Topic 7 · International Law — Treaties; the CAH Convention Process

On 12–13 October, the General Assembly's **Sixth Committee** took the decisive procedural steps toward a convention the international system has lacked for eighty years: a dedicated treaty on **crimes against humanity**. States converged on fixing the dates of the **Diplomatic Conference's first session in 2028**, with a second preparatory session in April 2027 and negotiating sessions across 2028–29 — the process launched by the Assembly's resolution of December 2024 on the ILC's Draft Articles.

The normative gap is stark: genocide has its 1948 Convention, war crimes the 1949 Geneva Conventions — **crimes against humanity, though older than both as a charge, have no suppression treaty at all.** The ILC's 2019 Draft Articles would close the gap with obligations of **prevention**, criminalisation in domestic law, **aut dedere aut judicare** on the Hague–Torture Convention model (*Belgium v. Senegal* the enforcement precedent), non-refoulement, and an ICJ compromissory clause.

The treaty-formation mechanics are the syllabus in motion: adoption at a diplomatic conference under the familiar **VCLT Articles 9–18 sequence**, the consensus-versus-two-thirds battle already visible, and the **reservations war foreseeable** — the definitional fights over gender

persecution and apartheid that divided the Sixth Committee will return as reservation clauses. The definition itself tracks Article 7 of the Rome Statute — a treaty borrowing its core from the very court now under sanction.

8.Bangkok and the Reparations Loan: Monetary Law Meets State Responsibility

Topic 8 · International Law — IMF & Monetary Law; Frozen Sovereign Assets

The **IMF–World Bank Annual Meetings** ran in Bangkok from 12 to 18 October — the first Asian host in over a decade — with the 54th meeting of the IMFC at the week's close. The legal centrepiece was not quotas but a question the Bretton Woods order has never faced: the EU's proposed **'reparations loan' of over €140 billion to Ukraine, built on immobilised Russian central-bank assets**, with Ukraine's delegation pressing its 2027 financing gap and a European Council decision looming within days.

The doctrinal collision is frontal. Customary international law gives **central-bank property immunity from measures of constraint** — the rule codified in Article 21 of the UN Jurisdictional Immunities Convention. Immobilisation has so far been defended as a reversible, temporary measure; a loan repayable **only out of future Russian reparations** converts the freeze into something harder — enforcement of a liability no tribunal has yet quantified.

The proponents' framework is the law of State responsibility: Russia owes reparation for an unlawful war on the *Chorzów* standard — codified in **ARSIWA Article 31** — and third States point to **Article 54's** studied agnosticism on collective countermeasures by States other than the injured. Against them stands monetary law's deepest interest: **reserve-currency trust** — the IMF itself keeping its distance, treating asset decisions as matters 'for relevant country authorities' while it monitors the systemic fallout.

Weekly Focus

North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; FRG v. The Netherlands), ICJ Rep 1969, p. 3

Facts: Germany, Denmark and the Netherlands had to divide the **continental shelf of the North Sea** — and the oil beneath it. Denmark and the Netherlands invoked the **equidistance method** of Article 6 of the 1958 Geneva Convention on the Continental Shelf: every point equidistant from the nearest coasts. Germany's concave coastline meant equidistance would pinch it into a narrow wedge — and Germany had signed but **never ratified** the Convention. By Special Agreements, the States asked the Court one question: what rules of international law govern the delimitation?

Question of Law: Article 6 did not bind Germany as treaty. Had the **equidistance principle become customary international law** — binding even on a non-party — either because the Convention **crystallised** an emerging rule, or because subsequent State practice had **generated** a rule from the conventional provision?

Decision: No. A treaty rule can pass into custom — "this process is a perfectly possible one and does from time to time occur" — but **"this result is not lightly to be regarded as having been attained."** It requires a provision of **"a fundamentally norm-creating character"**; participation that is **"very widespread and representative... provided it included that of States whose interests were specially affected"**; and even where the time elapsed is short, State practice that is **"both extensive and virtually uniform"** and shows "a general recognition that a rule of law or legal obligation is involved." The instances cited failed every test — the equidistance method was not customary law, and the delimitation was remitted to **equitable principles**.

Ratio: The judgment's heart is the definition of **opinio juris**: "Not only must the acts concerned amount to a settled practice, but they must also be such... as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it... The States concerned must therefore feel that they are conforming to what amounts to a legal obligation. The frequency, or even habitual character of the acts is not in itself enough." Acts of **"ceremonial and protocol,"** performed "almost invariably," create no law, being "motivated only by considerations of courtesy, convenience or tradition." Custom is thus **two elements, both mandatory**: general practice, and the belief that the practice is law.

Legal Significance: This is the **source-of-sources judgment** — the modern definition of customary international law, the two-element doctrine on which the ILC's conclusions on identification of custom are built. *Nicaragua* (1986) completed it: practice need not be "in absolutely rigorous conformity" — conduct inconsistent with a rule, when treated as a **breach** rather than a new rule, "confirm[s] rather than... weaken[s]" the custom. From treaty-to-custom pathways (the question asked of every new convention, this week's crimes-against-humanity project included) to the specially-affected-States test, every answer on sources begins at the North Sea.

PYQ Solution

Can caste be the sole criterion for identifying 'backward classes' under Articles 15(4) and 16(4)? Trace the judicial evolution of backward-class identification from Balaji to Indra Sawhney. (15 MARKS)

Articles 15(4) and 16(4) were the Constitution's first amendments in spirit and in fact — clause (4) of Article 15 was inserted in 1951 to override *Champakam Dorairajan* and legitimise special provision for backward classes. Ever since, one question has organised the case law: **is caste the measure of backwardness, or only its symptom?**

The identification of backwardness

1. **Balaji — caste dethroned: *M.R. Balaji v. State of Mysore** *(1963) set the foundation: backwardness under Art. 15(4) must be "social and educational", and though caste may be relevant, a classification "really based on caste considerations" and not on social and*

economic backwardness is void — with the companion discipline that special provision carried "to an unreasonable extent" itself violates equality, the origin of the 50% ceiling. Chitralekha *confirmed that backwardness can be determined without reference to caste at all*.

2. **The equality backstop — Devadasan: *T. Devadasan v. Union of India** *(1964) struck down the carry-forward rule that pushed reservation beyond the ceiling in a single year: the special treatment of Arts. 15(4)/16(4) "must be kept within reasonable limits"** lest it "render nugatory" the general guarantee of equality — the reminder that clause (4) is an emphatic facet of equality, not an exception devouring it.

3. **Indra Sawhney — caste readmitted, disciplined:** The nine-Judge Bench (1992) settled the field: a caste can be, and often is in the Indian social context, a **socially backward class** — caste is a legitimate **starting point** of identification, provided the class, not the caste label, is backward. The discipline came with the recognition: the **creamy layer** must be excluded — those who "by passage of time ceased to be backward" cannot ride the class's claim — the 50% ceiling was confirmed, and backwardness under Art. 16(4) need not be educational backwardness as under 15(4).

4. **The continuing audit:** Identification is a continuing constitutional function, not a one-time notification: the State must act on **material, not assumption** — the lesson running from *Balaji* through the creamy-layer doctrine's rationale that "no group of persons should be held to be more equal than the other" (*Nair Service Society*) to the empirical-data discipline now enforced for every new inclusion.

The current application: The Supreme Court applied the full doctrine this week, affirming the invalidation of Tamil Nadu's 'backward class Muslim' certificates for converts: **mere caste membership is not conclusive proof of social backwardness, and conversion severs a caste-based claim** where the new faith does not organise status by caste — backwardness is a social fact to be found on evidence, never a label carried through conversion or presumed from descent.

Conclusion: Six decades of doctrine reduce to one sentence: caste may open the inquiry into backwardness, but only social reality may close it — and the moment identification becomes assumption, Articles 15(4) and 16(4) stop being instruments of equality and become its exceptions.