Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

21st - 27th Sept, 2026

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1.Who Picks the Election Commission? A Split Verdict Sends the 2023 Act to a Constitution Bench

Topic 1 · Constitutional Law — Election Commission; Art. 324

Dr. Jaya Thakur v. Union of India (with ADR & connected petitions) (2026) The **composition of the body that appoints the Election Commission** returned to centre stage on 23 September 2026. Six Article 32 petitions challenge the **CEC and other ECs (Appointment, Conditions of Service and Term of Office) Act, 2023** — principally Section 7, which replaced the **Chief Justice of India** in the selection committee, mandated by the Constitution Bench in *Anoop Baranwal v. Union of India* (2023), with a Union Cabinet Minister nominated by the Prime Minister. A Bench of Justice Dipankar Datta and Justice Satish Chandra Sharma delivered a **split verdict** on the Centre's plea for reference to a larger Bench.

Anoop Baranwal had filled the legislative vacuum in **Article 324(2)** — which leaves ECI appointments to the President "subject to the provisions of any law made... by Parliament" — with a CJI-PM-LoP committee to hold the field *until Parliament legislated*. Parliament then legislated the CJI out. The challenge asks whether that response respects the judgment's premise: an Election Commission **independent of the executive** as a facet of free and fair elections.

The split was doctrinally clean. **Justice Datta held no reference was needed**: free and fair elections are a **basic feature** of the Constitution, and a two-judge Bench could measure the Act against settled principle. **Justice Sharma held the petitions raise a substantial question of law as to the interpretation of the Constitution**, which **Article 145(3)** commands be decided by a Bench of at least five Judges. Despite the disagreement, both judges directed the papers be placed before the Chief Justice for the constitution of a **five-judge Bench** — the Court also floating the idea of a permanent Constitution Bench for such questions.

Either way the case now travels upward, and the constitutional stakes travel with it: whether Parliament, exercising the very power Article 324(2) reserves to it, may recompose the appointing body in the executive's favour — or whether the independence *Anoop Baranwal* located in the Constitution's structure limits even the legislature's design choices.

2.Life the Rule, Death the Exception — and the Sentence Between

Topic 2 · Law of Crimes — Kinds of Punishment; Capital Sentencing

Waris v. State of Madhya Pradesh (2026) **Capital punishment doctrine** decided this death reference. The appellant stood convicted under the IPC and POCSO for the repeated rape and murder, by throttling, of his six-year-old stepdaughter; the courts below had imposed death. A three-judge Bench of Justice Vikram Nath, Justice Sandeep Mehta and Justice Vijay Bishnoi **upheld the conviction but commuted the sentence** (2026 INSC 1050).

The commutation applied *Bachan Singh*'s discipline with textbook rigour: death may be imposed only in the **rarest of rare cases**, where — weighing the crime *and* the criminal — the alternative of life imprisonment is **"unquestionably foreclosed"** and the possibility of reformation stands excluded. The State, the Court held, had failed to discharge its burden of showing the appellant **beyond reformation**: his custodial conduct, socio-economic background and absence of criminal antecedents all pointed the other way. The crime's brutality alone could not supply what the criminal's profile denied.

But ordinary life imprisonment — with its prospect of remission after fourteen years — was inadequate to the gravity. The Court deployed the **intermediate sentence** of *Swamy Shraddananda*, affirmed in *V. Sriharan*: **imprisonment for the remainder of natural life, without remission** — the judicially crafted third option that keeps the door of reformation open while closing the door of release.

3.Recovery Is Not Demand: The Trap That Proves Too Little

Topic 3 · Law of Crimes — Prevention of Corruption Act; Proof of Demand

Jaswinder Singh (D) through LRs v. State of Punjab (2026) The **ingredients of bribery** under the Prevention of Corruption Act, 1988 yielded a posthumous acquittal. A Patwari, convicted under Section 7 read with Section 13(2) over an alleged ₹10,000 bribe for mutation of property records — ₹9,500 in tainted currency recovered in a vigilance trap — died pending appeal; his legal representatives fought on. A Bench of Justice Ujjal Bhuyan and Justice Arun Palli acquitted (2026 INSC 1031).

The principle: **proof of demand of illegal gratification is the gravamen** of the offences under Sections 7 and 13(1)(d)(i) and (ii). **Mere acceptance, or mere recovery of tainted money, without proof of the antecedent demand, cannot sustain a conviction** — the trap that produces currency but no proven demand proves possession, not bribery.

The consequence again runs through **Section 20**: the presumption that gratification was received as motive or reward arises only upon proof of the **foundational fact**. *Neeraj Dutta*'s Constitution Bench permits that fact to be proved circumstantially — but it must be *proved*; where the evidence of demand fails, the presumption never engages, and the recovery stands as an unexplained fact, not a completed offence.

4.The Seat Is Chosen, Not Inherited: Venue, Convenience and the Appointing Court

Topic 4 · Contracts & Mercantile Law — Arbitration Act; Seat vs Venue

Mahanadi Coalfields Ltd. v. GSCO Infrastructure Pvt. Ltd. (2026) The **juridical seat of arbitration** — the concept that fixes which court supervises the award — was disentangled from two of its commonest confusions. A 2012 contract for heavy earth-moving machinery at a coal project in Sundargarh, Odisha, produced an award; the challenge under Section 34 was met with the objection that the seat lay elsewhere. A Bench of Justice Sanjay Kumar and Justice Sanjeev Sachdeva held otherwise (2026 INSC 1038).

Two propositions emerge. First, **the conduct of arbitral sittings at a place for administrative convenience does not make that place the seat**: venue is geography, seat is law, and hearings held where the arbitrator finds convenient carry no submission to that place's supervisory jurisdiction. Second, **the fact that a particular High Court appointed the arbitrator does not anchor the seat at that court's location** — the appointing court's physical situs is an accident of Section 11, not a choice of forum.

The doctrine descends from *BALCO* through *BGS SGS Soma*: the seat is fixed by the **parties' agreement, express or implied from the contract and conduct** — and where the agreement points to the place of the contract's performance, the supervisory court is the court for that place. The Orissa High Court's contrary view was set aside and the Section 34 petition restored to the District Judge, Sundargarh.

5.The Surveyor's Report Is Not Optional Reading: Insurance Fraud and the Consumer Forum

Topic 5 · Contracts & Mercantile Law — Insurance; Consumer Protection

New India Assurance Co. Ltd. v. Hemkund Duplex & Board Pvt. Ltd. (2026) The **contract of insurance** — uberrimae fidei, a contract of utmost good faith — met a claim the surveyors called staged. A paper factory claimed ₹7.31 crore after a fire; successive surveyors found inflated stock figures, false declarations, and a shed demolished by earth-moving machinery, reporting the fire “doesn't seem accidental.” The insurer repudiated; the NCDRC nonetheless awarded ₹2.40 crore. A Bench of Justice Sanjay Kumar and Justice Sanjeev Sachdeva set the award aside (2026 INSC 1023).

The holding gives the surveyor's report its statutory due: a report under **Section 64UM of the Insurance Act, 1938** carries **statutory standing and evidentiary value**, and a consumer forum **cannot brush it aside** to award a claim unless the insured demonstrates a specific, recognised deficiency in the report itself. A forum that ignores the detailed survey underlying a repudiation, and substitutes its own assessment, vitiates its decision.

The doctrine protects the insurance bargain from both directions. The insurer cannot repudiate arbitrarily — the surveyor's report is its shield only because the report is independent and statutory; and the insured cannot inflate — **utmost good faith binds the claimant at the claim stage as strictly as at the proposal stage**, and a fabricated loss forfeits the indemnity altogether.

6.Convicted of Crimes Against Humanity, Acquitted of War Crimes: The Nexus Decides

Topic 7 · International Law — International Criminal Court; Classification of Conflict

On 23 September 2026, ICC Trial Chamber VI delivered its trial judgment in ***Prosecutor v. Mahamat Said Abdel Kani** *(Central African Republic situation): the former Séléka commander who ran the OCRB detention facility in Bangui was convicted of four crimes against humanity — imprisonment, torture, persecution and other inhumane acts, committed against perceived Bozizé loyalists between April and August 2013 — and acquitted of all three war-crimes counts** arising from the same conduct. He is the first senior Séléka figure convicted at the Court; sentencing follows in November.

Liability rested on **direct co-perpetration under Article 25(3)(a)** of the Rome Statute — the control-over-the-crime theory of *Lubanga* and *Katanga* — not on command responsibility: Said personally directed the detention regime. The crimes-against-humanity counts stood on **Article 7's contextual element**: a widespread or systematic attack against a civilian population pursuant to an organisational policy, with persecution under Article 7(1)(h) targeting victims on political grounds.

The acquittals turned on **conflict classification**. War crimes under Common Article 3 and Article 8(2)(c) require a **nexus to an armed conflict** — and the Chamber found the non-international armed conflict had effectively ended with President Bozizé's ouster in March 2013, before the charged period. Under the *Tadić* test, what followed was the one-sided repression of a victorious faction, not protracted armed violence between organised groups: brutality, but not battle.

Core legal tension: the same acts of torture convicted as crimes against humanity and acquitted as war crimes — the cleanest modern illustration that crimes against humanity need **no armed-conflict nexus** under the Rome Statute, while war crimes stand or fall on the classification of the conflict, so that the end of a war can extinguish one category of liability while leaving the other untouched.

7.States That Outlive Their Territory: The UN's First Sea-Level Rise Declaration

Topic 8 · International Law — Statehood & Recognition; Law of the Sea

On 24 September 2026, during the General Assembly's high-level week, member States approved by consensus the first **UN Declaration on Sea-Level Rise** — the first membership-wide instrument on the legal consequences of the sea's advance. The Declaration endorses the ILC Study Group's conclusions on statehood and maritime zones, and the United Kingdom announced its recognition of **continued statehood even after territorial inundation**; small-island coalitions welcomed the language on “stability of maritime zones and continuity of Statehood.”

Two doctrines are remade. On **statehood**: the Montevideo Convention's criteria — defined territory, permanent population, government, capacity — describe the *creation* of States, and the Declaration consolidates the view that they do not govern *extinction*: once established, a State enjoys a strong **presumption of continuity**, even as the physical territory that satisfied the criterion disappears beneath the sea. Deterritorialised statehood, long a thought experiment, now has the Assembly's imprimatur.

On the **law of the sea**: the Declaration embraces the ILC position that UNCLOS Articles 5, 7 and 16 do not *oblige* States to update baselines or the outer limits of maritime zones once deposited — baselines may be **frozen** notwithstanding physical regression, preserving the territorial sea, EEZ and continental

shelf of a coast that no longer exists. The ambulatory-baseline orthodoxy, under which entitlements recede with the coastline, is displaced by legal stability.

Core Question: whether frozen baselines and continued statehood are *interpretation* of existing law — subsequent practice under Article 31(3)(b) of the Vienna Convention — or *modification* dressed as interpretation, law-making by General Assembly declaration; and beneath it, whether international law's foundational categories can be decoupled from the physical facts that once defined them.

Weekly Focus

Subhash Desai v. Principal Secretary, Governor of Maharashtra & Ors., [2023] 8 S.C.R. 857

Facts: After the 2019 Maharashtra elections, a post-poll coalition (Maha Vikas Aghadi) governed with Mr. Thackeray of the Shiv Sena as Chief Minister. In mid-2022 the party split; **34 MLAs of the Shinde faction** told the Deputy Speaker he no longer enjoyed their support, while disqualification petitions under the **Tenth Schedule** were filed against them. The **Governor**, acting on the Opposition's letter, called on Mr. Thackeray to prove his majority; Thackeray resigned on the eve of the floor test, and Mr. Shinde formed a government with BJP support. A **five-Judge Constitution Bench** (Chandrachud CJI, Shah, Krishna Murari, Kohli and Narasimha, JJ) decided the batch on 11 May 2023.

Question of Law: (i) When may the Governor call for a **floor test** — and did objective material exist here? (ii) Who appoints the **Whip and Leader** for the Tenth Schedule: the political party or the legislature party? (iii) Can the Supreme Court decide **disqualification petitions** at first instance? (iv) What is the effect of the **deletion of Paragraph 3** (the split defence)? (v) Does *Nabam Rebia* — barring a Speaker facing removal from deciding disqualifications — survive?

Decision: The Governor's discretion to call a floor test is **"not an unfettered discretion"**: it requires **objective material** indicating the government has lost the confidence of the House. The resolution of the 34 MLAs expressed discontent, not withdrawal of support — and **"the floor test cannot be used as a medium to resolve internal party disputes or intra party disputes."** The Governor's call was therefore not in accordance with law; but status quo ante could not be restored, since Thackeray resigned without facing the test, and the Governor was justified in inviting Shinde thereafter. The **political party, not the legislature party, appoints the Whip**; disqualification is for the **Speaker within a reasonable period**, not the Court at first instance; with Paragraph 3 deleted, **the defence of 'split' no longer exists**; and *Nabam Rebia*, being in conflict with *Kihoto Hollohan*, was referred to a larger Bench.

Ratio: The Governor is a **titular constitutional functionary** who "cannot exercise a power that is not conferred on him by the Constitution or a law made under it" — and nothing empowers him "to enter the political arena and play a role (however minute) either in inter-party disputes or in intra-party disputes." The Tenth Schedule's machinery — Speaker's adjudication, party-appointed whip, no split defence — protects the **political party as the unit of democratic accountability**; the Speaker and the ECI exercise **concurrent jurisdiction** under the Tenth Schedule and the Symbols Order, the ECI free to fashion a test beyond legislative-majority arithmetic.

Legal Significance: The decision is the modern charter of the **Governor's powers in a hung or fracturing House**: floor tests require objective material of lost confidence, not evidence of party turmoil. With *S.R. Bommai* it brackets the gubernatorial discretion from both ends — majority is tested on the floor, but only when the Constitution's conditions for the test exist. Its whip-and-party holdings have

governed every defection battle since, and the *Nabam Rebia* reference keeps the Speaker's own tenure entangled with the anti-defection scheme.

PYQ Solution

"Life imprisonment is the rule and death sentence an exception." Trace the judicial evolution of capital sentencing in India from Jagmohan Singh to the doctrine of the 'rarest of rare', and examine the courts' search for a sentence between death and ordinary life imprisonment. (15 MARKS)

The constitutionality of the death sentence and the discipline of its imposition have been built case by case. **Section 302 offers two sentences — death and life imprisonment** — and the entire jurisprudence is an answer to one question: on what principles does a court choose between them?

The evolution of capital sentencing doctrine

1. **Phase I — constitutionality and crime-centred discretion:** In ***Jagmohan Singh v. State of U.P.*** *(1973), the Constitution Bench upheld the constitutionality of the death penalty, holding that sentencing discretion is exercised by balancing the aggravating and mitigating circumstances "of the crime" — the particular crime under inquiry.* Rajendra Prasad *(1979) then swung the focus: the "special reasons" for death must relate "not to the crime but to the criminal."**

2. **Phase II — Bachan Singh and the rarest of rare: *Bachan Singh v. State of Punjab** *(1980), again a Constitution Bench, settled the framework while upholding validity: "for persons convicted of murder, life imprisonment is the rule and death sentence an exception" — death only in the "rarest of rare cases," and only when the alternative of life imprisonment is "unquestionably foreclosed." The focus shifted from the crime alone to the crime and the criminal together*.

3. **The balance sheet — Machhi Singh: *Machhi Singh v. State of Rajasthan** *(1983) elaborated the guidelines into a balance-sheet of aggravating and mitigating circumstances — manner of commission, motive, magnitude, victim's vulnerability — with mitigating circumstances accorded full weightage. Later benches noted the theory's flaw: aggravation pertains to the* crime*, mitigation to the* criminal* — "completely distinct and different elements" drawn up in one ledger.

4. **The critique and the third sentence: *Swamy Shraddananda** *(2008) held the Machhi Singh categories "cannot be taken as inflexible, absolute or immutable" — and, confronting the gulf between death and release after fourteen years, crafted the special-category sentence: imprisonment for the remainder of natural life, beyond remission.* Bariyar *and* **Sangeet v. State of Haryana** *(2013) pressed the deeper critique: the rarest-of-rare threshold has been "most variedly and inconsistently applied," and sentencing has become judge-centric** rather than principled.

The current position: Death requires the State to show reformation **foreclosed** — custodial conduct, background and antecedents all weigh — and where life-with-remission is inadequate but death unwarranted, the *Shraddananda* intermediate sentence holds the ground between: the very structure the Supreme Court applied this week in commuting a POCSO death sentence to imprisonment for the remainder of natural life without remission.

Conclusion: Half a century after *Jagmohan Singh*, the doctrine stands on three propositions: the penalty is constitutional; its imposition is exceptional, governed by the rarest-of-rare standard with the criminal's reformability at its centre; and the judicially crafted whole-life sentence — not the gallows — has become the working answer to the gravest crimes.

De Facto IAS