Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

27th July - 2nd August, 2026

1.Police Custody Beyond the First Fifteen Days: The BNSS Remand Scheme Explained.....1
2.No Regularisation by Memorandum: Prior Environmental Clearance Is the Rule.....2
3.The Elevator as a Common Carrier: A Heightened Duty of Care..... 2
4.Recommendatory, Not Adjudicatory: The Limits of the Constitutional Commissions..... 3
5.The ILC Closes Its 77th Session: State-Official Immunity Ready for a Convention..... 3
6.Arbitration That Cannot Be Stalled: The Kerch Strait Tribunal Is Reconstituted..... 4

Weekly Focus

Arnesh Kumar v. State of Bihar, [2014] 8 S.C.R. 128..... 4
PYQ Solution..... 5

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1.Police Custody Beyond the First Fifteen Days: The BNSS Remand Scheme Explained

Topic 1 · Law of Crimes — Criminal Procedure (BNSS); Arrest & Remand

State of Andhra Pradesh v. Suda Suresh Veera Venkata Naga Raju (2026) The first major exposition of the **remand scheme of the Bharatiya Nagarik Suraksha Sanhita, 2023** came in a custodial-death investigation against a police inspector. A Bench of Justice Vikram Nath and Justice Sandeep Mehta held that **Section 187(2)–(3) BNSS is a deliberate legislative departure from Section 167 CrPC**: police custody is no longer confined to the first fifteen days of remand (2026 INSC 744).

Under the new scheme, police custody **"may be sought in parts"** at any time during the **first forty or sixty days** of the permissible detention period (depending on the offence), subject always to the **aggregate cap of fifteen days.** Courts, the Bench held, **"cannot place an absolute non-extendable outer limit on police custody"** — a judicial gloss that would rewrite the statute the legislature consciously restructured.

The Court also calibrated the conditions the High Court had attached to custody. The requirement that an advocate be present **throughout** interrogation was contrary to **Section 38 BNSS**, which **"confers a right to meet, not continuous presence of advocate during interrogation"** — counsel may remain within

visual range but cannot intervene. Confining interrogation to a distant central prison was unworkable; videography of the interrogation was retained, though it need not be uninterrupted.

The organising principle is balance: conditions protective of the accused cannot **"render investigation ineffective."** The judgment fixes the interpretive baseline for the BNSS's most litigated provision — enlarging the window within which police custody may be taken, while preserving the fifteen-day aggregate ceiling and the arrested person's statutory access to counsel.

2.No Regularisation by Memorandum: Prior Environmental Clearance Is the Rule

Topic 2 · Contemporary Law — Environment; Delegated Legislation

Vanashakti v. Union of India (2026) The hierarchy of subordinate legislation decided the fate of **post-facto environmental clearance**. A three-Judge Bench of Chief Justice Surya Kant, Justice Joymalya Bagchi and Justice Vipul M. Pancholi — speaking through Bagchi, J. — **quashed the 2021 Office Memorandum** by which the Centre had created a standing route for regularising projects built without prior clearance.

The prior-clearance regime of the **EIA Notification, 2006** — issued under **Section 3 of the Environment (Protection) Act, 1986 — "is mandatory unless amended through a statutory notification"**; and an office memorandum, being mere executive instruction, **is not a statutory notification.** The executive cannot, by administrative circular, carve exceptions into a regime created by statutory delegated legislation — the *Vanashakti* holding is as much administrative law as environmental law.

The Court did not extinguish the power itself: the Centre **retains competence to frame a "narrowly tailored amnesty notification"** for exceptional cases of demonstrable public interest — but only through a valid amending notification under Section 3, with the discipline and publicity that instrument entails. The quashing operates **prospectively**: clearances already granted under the OM survive, but no fresh post-facto applications may be entertained.

The judgment restores the architecture of preventive environmental regulation: the clearance that matters is the one that precedes the project, because an assessment conducted after the concrete has set assesses nothing. Regularisation, if it is ever to exist, must be the legislature's and the statute's choice — not the administration's.

3.The Elevator as a Common Carrier: A Heightened Duty of Care

Topic 3 · Law of Torts & Consumer Protection — Negligence; Common Carrier

M/s OTIS Elevator Co. (India) Ltd. v. Rashmi Handa (2026) In a decision extending a classical common-law category to modern technology, the Supreme Court held that **"an elevator must be construed and deemed to be a common carrier"** — vertical transportation on which passengers **"have to entirely rely on automation"** — so that those who make, maintain and operate lifts owe a **heightened duty of care.** A Bench of Justice P.S. Narasimha and Justice Alok Aradhe affirmed compensation of over ₹3 crore for the death of a senior officer crushed in a lift malfunction at his office premises in 2003 (2026 INSC 756).

The common-carrier characterisation does doctrinal work: the passenger in an automated lift, like the passenger of a carrier, surrenders control entirely, and the law responds by raising the standard of care owed by the **manufacturer, the maintenance contractor and the premises owner alike — joint 'duty bearers.'**

On the facts, OTIS stood in a double capacity — manufacturer **and** comprehensive maintenance contractor with exclusive technical expertise. It **knew of persistent electrical faults**, failed to install a

recommended voltage stabiliser, and defaulted on engineer attendance and emergency training: a plain **deficiency of service.** The apportionment among the joint wrongdoers — **70% on OTIS, 25% on the military engineering service, 5% on the employer** — was upheld, a working application of **composite negligence.**

The judgment knits together tort and consumer law: the duty of care scales with the victim's dependence and the defendant's expertise, and where several duty-bearers contribute to a single indivisible harm, liability is distributed by relative fault while the claimant's compensation remains whole.

4.Recommendatory, Not Adjudicatory: The Limits of the Constitutional Commissions

Topic 4 · Constitutional Law — Constitutional Bodies (Arts. 338, 338A, 338B)

Mumbai Port Authority v. National Commission for Scheduled Castes (2026) The powers of the **National Commission for Scheduled Castes** — and by extension its sister commissions — were delimited by the Supreme Court: the Commission cannot issue **binding directions**, here a direction to an employer to pay arrears. A Bench of Justice Sanjay Karol and Justice Augustine George Masih set aside the High Court judgment that had sustained the direction (2026 INSC 755).

The Court held that the **"NCSC and its other compatriots under Articles 338A and 338B are Constitutional Bodies… but quite apparently, the Legislature has prescribed a role that is recommendatory and advisory, but certainly not adjudicatory."** The constitutional design gives the Commissions investigation, monitoring and recommendation; it does not make them courts.

The conferment of certain **powers of a civil court** — summoning witnesses, discovery, receiving evidence — serves the Commission's **investigative and monitoring functions**; it is not a grant of adjudicatory jurisdiction, and cannot be parlayed into the power to decide disputes and command payment. The direction for arrears was accordingly **"declared to be contrary to the provisions of the Constitution."**

The principle keeps the constitutional scheme in joint: safeguard institutions amplify grievances and press the executive, but the **determination of rights remains with courts and tribunals.** A body designed to be the conscience of the state cannot convert itself into its judge.

5.The ILC Closes Its 77th Session: State-Official Immunity Ready for a Convention

Topic 5 · International Law — Codification; Immunities of State Officials

The **UN International Law Commission concluded its 77th session at Geneva on 30 July 2026**, and its harvest was substantial. The centrepiece: adoption on **second reading** of the **draft articles on immunity of State officials from foreign criminal jurisdiction** — seventeen articles with commentaries — with a recommendation to the General Assembly for the **elaboration of a convention.**

The battleground is **draft article 7**: no immunity *ratione materiae* — the functional immunity that ordinarily attaches to official acts — for **genocide, crimes against humanity, war crimes, torture, enforced disappearance and apartheid.** Its defenders see codification of an emerging custom demanded by accountability; objecting States call it progressive development unsupported by practice, pointing to the ICJ's caution in ***Arrest Warrant* (2002)** and ***Jurisdictional Immunities (Germany v. Italy)* (2012).** Whether a treaty will consolidate the exceptions or freeze the contest is itself contested.

The session's other outputs map the doctrine of sources: **twelve draft conclusions on general principles of law** (second reading) engaging **Article 38(1)(c) of the ICJ Statute** — including the disputed 'second category' of principles formed within the international legal system itself; first-reading

texts on **subsidiary means (Article 38(1)(d))** and on the **settlement of disputes involving international organizations**; and, on 30 July, a **new topic — the identification and legal consequences of obligations *erga omnes*** — with a Special Rapporteur appointed.

Core legal tension: whether the functional immunity of State officials yields to exceptions for international crimes — accountability through foreign and universal jurisdiction against the sovereign equality and stability of inter-State relations.

6.Arbitration That Cannot Be Stalled: The Kerch Strait Tribunal Is Reconstituted

Topic 6 · International Law — Law of the Sea; Compulsory Arbitration

By press release of 29 July 2026, the **President of ITLOS** announced that he had appointed **Alberto Székely y Sánchez (Mexico)** to the **Annex VII arbitral tribunal** in the *Dispute Concerning the Detention of Ukrainian Naval Vessels and Servicemen (Ukraine v. Russian Federation)* — the Kerch Strait case. The vacancy arose from an arbitrator's withdrawal; **Russia, continuing its policy of default, again failed to appoint a replacement**, and Ukraine invoked the appointing authority.

The mechanism is UNCLOS's answer to obstruction. Under **Annex VII, Article 3(c)**, a party must appoint its arbitrator within thirty days; on default, **Article 3(e)** empowers the **President of ITLOS** to make the appointment, and **Article 3(f)** applies the same route to vacancies. **Article 9** completes the design: non-appearance of a party is no bar to the proceedings. Compulsory arbitration under **Article 287** would be illusory if a respondent could paralyse it by refusing to participate.

Russia's position remains that the dispute concerns **'military activities' excluded by its declaration under Article 298(1)(b)** — an objection the tribunal rejected at the preliminary-objections stage in 2020 — and its serial non-appointment functions as continued protest. Ukraine's answer is structural: the Convention's dispute-settlement machinery is **self-executing**, and the tribunal — now fully reconstituted — proceeds.

Core legal tension: the default-proof architecture of compulsory arbitration under UNCLOS against a great power's strategy of procedural obstruction and non-appearance.

Weekly Focus

Arnesh Kumar v. State of Bihar, [2014] 8 S.C.R. 128

Facts: The appellant-husband, apprehending arrest in a case under **Section 498-A IPC and Section 4 of the Dowry Prohibition Act, 1961**, was refused anticipatory bail by the High Court and appealed. Against the backdrop of a **phenomenal increase in matrimonial disputes** and the police practice of routine arrest in such cases, the Supreme Court (Chandramauli Kr. Prasad and Pinaki Chandra Ghose, JJ) used the appeal to restate the law of arrest without warrant.

Question of Law: When may the police arrest **without a warrant** for offences punishable with imprisonment up to seven years? What must a police officer record before arresting — and before *not* arresting — under **Sections 41 and 41-A CrPC**, and what is the **Magistrate's duty under Section 167** before authorising detention?

Decision: The Court held that for offences punishable up to seven years, a person **cannot be arrested merely on the officer's satisfaction that he committed the offence**: the officer must further be satisfied that arrest is necessary for one of the purposes in **Section 41(1)(b)(ii)(a)–(e)** — to prevent further offences, for proper investigation, to prevent disappearance or tampering of evidence, to prevent

inducement of witnesses, or to ensure presence in court — and must **record his reasons in writing, both for arresting and for not arresting.** Where arrest is not required, **Section 41-A mandates a notice of appearance**; an accused who complies **shall not be arrested** unless, for reasons recorded, the officer considers arrest necessary. No arrest is lawful **merely because the offence is non-bailable and cognizable.**

The Magistrate's Duty: Authorising detention under **Section 167 is "a very solemn function"**: before remand the Magistrate must be satisfied that the **arrest itself was legal** and the constitutional rights of the arrested person — including production within twenty-four hours under **Article 22(2) and Section 57** — were complied with. Detention authorised in a **"routine, casual and cavalier manner"**, and the mechanical reproduction of Section 41 grounds in the case diary, were expressly deprecated.

Legal Significance: "The existence of the power to arrest is one thing, the justification for the exercise of it is quite another" — arrest brings humiliation, curtails freedom and casts scars forever. The decision converts Articles 21 and 22 into an operational checklist at the police station and the remand desk, and its directions, enforced through contempt and departmental action, remain the governing discipline on arrest — a scheme now carried forward into the corresponding provisions of the BNSS.

PYQ Solution

"The precautionary principle and the polluter pays principle are part of the environmental jurisprudence of India." Explain these principles and trace their constitutional and judicial foundations. (15 MARKS)

Indian environmental law rests on a constitutional tripod read into **Article 21**: the right to life comprehends a wholesome environment, informed by the **Directive Principles in Articles 47 and 48-A** and the **fundamental duty in Article 51-A(g).** Upon this foundation the Supreme Court has built the operative principles of **sustainable development.**

The principles and their foundations

1. **Vellore Citizens' Welfare Forum (1996):** The Court unpacked **sustainable development** — reading Article 21 with Articles 47, 48-A and 51-A(g) and the environmental statutes — and held that the **precautionary principle and the polluter pays principle are two facets of sustainable development**, accepted as part of the law of the land.
2. **The precautionary principle:** Environmental protection must **anticipate and prevent** the causes of degradation rather than react to them; **scientific uncertainty is no ground for postponing protective measures**, and the burden lies on the actor proposing the potentially harmful activity to show it is benign. The prior environmental clearance regime is this principle in statutory form — assessment must precede, not follow, the project.
3. **The polluter pays principle:** In ***Indian Council for Enviro-Legal Action***, *the failure of authorities to control pollution of soil and groundwater was held to violate the right to life of the affected persons; and in the* **Oleum Gas Leak case**, *the Court coupled the polluter pays principle with absolute liability: an enterprise engaged in hazardous activity must compensate the victims and bear the cost of restoring the degraded environment — liability without the exceptions of* Rylands v. Fletcher*.

4. **The public trust doctrine:** In ***M.C. Mehta v. Kamal Nath**, *sustainable development was expanded to include the public trust doctrine — the State holds natural resources meant for public use as a trustee**, and cannot alienate them to private exploitation in breach of that trust.

Operation of the principles: Together the principles allocate risk and cost: precaution governs **before** the harm — licensing, clearance, siting; polluter pays governs **after** — remediation and compensation; and the public trust doctrine polices the State's own dealings with the commons. Each is enforceable through Articles 32 and 226 as an incident of Article 21.

Conclusion: The principles have travelled from international soft law into binding domestic jurisprudence by judicial incorporation, converting the abstract right to a wholesome environment into working rules of governance — a jurisprudence whose vitality is evident whenever the executive attempts to dilute prior-clearance regimes by administrative instrument.

De Facto IAS