# Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

**16th November - 22nd November, 2026**

1.Relabelling Is Not Curing: Validating Laws and the Prem Singh Pension Case ..... 1

2.Consent First, Acquisition Later: Gram Sabha Consent under the 2013 Act ..... 2

3.A Society That Is Still 'State': National Book Trust and Article 12 ..... 3

4.Genocide Established: The World Court Rules on the Rohingya ..... 4

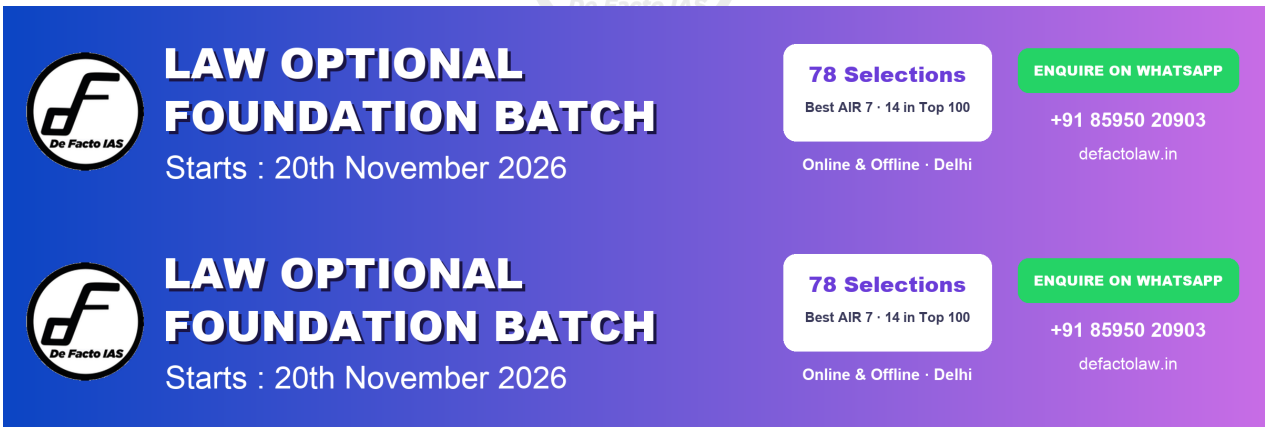
5.COP31 Ends Without a Cover Decision: Article 9.1, Procedure and Consensus ..... 5

**Weekly Focus**

Case of the Week: Reservations to the Genocide Convention (Advisory Opinion, ICJ 1951) [Topic- Law of Treaties] ..... 6

PYQ Solution ..... 7

**Join Telegram or Whatsapp for Weekly Update**




## 1.Relabelling Is Not Curing: Validating Laws and the Prem Singh Pension Case

Topic 1 · Constitutional Law — Judicial Review; Legislative Power to Validate a Law Struck Down by the Court

**U.P. Ground Water Department Non-Gazetted Employee Association v. Chief Secretary, State of U.P. (2026)** Can a State legislature undo a Supreme Court judgment by passing a validating Act? A Bench of Justice Dipankar Datta and Justice Satish Chandra Sharma, in a judgment authored by Justice Datta and reported on 20 November, declared two Uttar Pradesh laws **ultra vires** "in exercise of the power of judicial review": the **U.P. Qualifying Service for Pension and Validation Act, 2021** and the **U.P. Entitlement to Pension and Validation Act, 2025**.

The background is *Prem Singh v. State of U.P.* (2019), where the Supreme Court held that **work-charged service counts as qualifying service for pension** and read down **Rule 3(8)** of the U.P. Retirement Benefits Rules, 1961. The State answered with the 2021 Act, which redefined qualifying service by reference to

appointments against temporary or permanent posts and **retrospectively validated** every denial made under Rule 3(8) since 1 April 1961. When that failed to satisfy the employees, the 2025 Act introduced the concept of a "**substantive appointee**", excluded certain CPF/EPF subscribers and again validated past denials.

The Court applied the settled two-step test for validating legislation.

1. First, did the legislature have **competence** to make the law?
2. Second, has the **defect identified by the Court actually been removed**?

The test is whether the law **removed the infirmity**, not whether it supplied a **new verbal formula**. Relying on *Prithvi Cotton Mills v. Broach Borough Municipality*, *Indian Aluminium Co. v. State of Kerala* and *Madan Mohan Pathak v. Union of India*, it held that both Acts merely **re-labelled the same exclusion** through a deeming fiction. It added that **regularisation "obliterates the birthmark"** of the initial appointment.

The Court then issued directions: claims to be decided by the competent authority **within six months**, with benefits computed per employee (including heirs of employees who died after *Prem Singh*); **arrears limited to three years** before the *Prem Singh* writ petition; a reasoned order after a hearing before any rejection; **9% interest** on late payment;

and a final six months for the State to comply in pending contempt matters, with a warning of "aggravated contempt". Standard frame: a legislature may cure the **basis** of a judgment retrospectively, but it may not simply **declare the judgment wrong** or reverse its effect; that is the line between legislative and judicial power (*Prithvi Cotton Mills*, 1969).

## 2.Consent First, Acquisition Later: Gram Sabha Consent under the 2013 Act

Topic 2 · Constitutional Law — Right to Property (Art. 300A); Land Acquisition in Scheduled Areas (RFCTLARR Act, 2013, s. 41(3))

**Acquisition of land for a cement plant, Sundargarh (Odisha) (Supreme Court, 18 November 2026)** Is the Gram Sabha's prior consent a mandatory precondition for acquiring land in Scheduled Areas, or only a formality that can be supplied later? On Wednesday, 18 November, a Bench of Justice Dipankar Datta and Justice Satish Chandra Sharma (judgment authored by Justice Sharma) quashed the acquisition of land for a **Dalmia Cement plant in Scheduled villages of Sundargarh district, Odisha**, holding **Section 41(3)** of the **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 mandatory**.

The Orissa High Court had treated the requirement as **directory**. The Supreme Court rejected that view as reducing a mandatory requirement "into a paper formality".

1. The facts were stark: both Gram Sabhas had **rejected the proposal by resolutions of 26 January 2020**, and there was no Form M consent as the Odisha rules require.
2. For acquisitions for a **private company**, the consent of **80% of the affected families** under **Section 2(2)(b)**, together with the **Social Impact Assessment**, must come **first**; consent obtained later cannot cure the failure.

The Court also found the Social Impact Assessment flawed: there was **no public hearing**, and the Expert Group included an adviser linked to the company. A mining lease under the **MMDR Act** cannot override the rights of third-party landowners. The acquisition notifications and consequential orders were **quashed**, with liberty to start **fresh proceedings in accordance with law**.

Standard frame (not drawn from the judgment's text as reported): since the **44th Amendment**, the right to property survives as a **constitutional right under Article 300A**, so no person may be deprived of property except by **authority of law**. The 2013 Act is that law, and its procedural safeguards, including the Gram Sabha's role in Scheduled Areas, are conditions of the authority, not courtesies. The case shows a court reading procedure as **substance** where the people affected are tribal communities.

## 3.A Society That Is Still 'State': National Book Trust and Article 12

Topic 3 · Constitutional Law — 'State' under Article 12; Instrumentality and Agency (Ajay Hasia; Pradeep Kumar Biswas)

**Chairman, National Book Trust, India v. A.R. Abdul Gaffar (2026 INSC 1202) — judgment of 6 November 2026** Does a body registered as a society stop being "State" because it is not a statutory creation? A Bench of Justice Prashant Kumar Mishra and Justice Augustine George Masih held on 6 November that the **National Book Trust** is "State" under **Article 12** and dismissed its appeal against the **Delhi High Court Full Bench judgment of 1 June 2012**, which had held the Trust an instrumentality of the Government. This judgment was not carried in the earlier issues of this series.

The Trust was constituted under **Government resolutions of 15 June 1957 and 28 September 1962**. It argued that as a society it is **not a statutory body** and that Government grants are only one source of its income. The only question before the Court was whether it is "State" under Article 12.

The Court held that **registration as a society does not take a body outside Article 12 where governmental control over it is pervasive**. It treated the tests in *Ajay Hasia v. Khalid Mujib* (1981) as **indicative and not a mechanical checklist**, and held the Trust an "**other authority**" and therefore "State". The Full Bench had relied on *Ramana Dayaram Shetty*, *Ajay Hasia* and *Pradeep Kumar Biswas*.

The declaration has a limit. It operates **only for Part III** (fundamental rights): it does not make the Trust a Government department, nor its employees **civil servants** under **Part XIV** of the Constitution. Appeal dismissed; the Full Bench was upheld.

De Facto IAS

## 4.Genocide Established: The World Court Rules on the Rohingya

Topic 4 · International Law — International Court of Justice; State Responsibility for Genocide

**Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), ICJ, Judgment of 19 November 2026** On 19 November the **International Court of Justice** delivered its merits judgment in the case brought by **The Gambia** in 2019 against **Myanmar**, with **11 other States** intervening on questions of construction. By **nine votes to six**, the Court found that Myanmar's government and security forces committed **genocide** against the Rohingya group in northern Rakhine State. Human Rights Watch notes that this is the first time the Court has found a State responsible for **committing** genocide. The Court had upheld its jurisdiction and The Gambia's standing as a party to the Convention in **July 2022**; hearings on the merits were held in January 2026. (This account follows press coverage and early commentary; the full judgment should be checked for exact reasoning and vote counts of each operative clause.)

On the acts, the Court found **killing (Art. II(a))**, **causing serious bodily or mental harm (Art. II(b))** and **imposing measures to prevent births (Art. II(d))**. The harder question was **intent**. The Court applied its established standard of **"fully convincing evidence"** and held that **specific intent to destroy** the Rohingya "in substantial part, as such" was the **only reasonable inference** from the evidence: the general context, selective targeting, acts attacking the group's foundations (sexual violence, targeting of children) and the

systematic scale of the conduct. The fact that Myanmar did not take every opportunity to destroy the group did not rule that inference out.

The Court treated the roughly **815,000 Rohingya in northern Rakhine** as a **substantial part** of the group, and it rejected the alternative explanations offered: **counter-insurgency**, **forcible displacement** without destruction, and **collective punishment**. It also found Myanmar responsible for **failing to prevent** genocide, **failing to punish** it and **failing to enact legislation** under the Convention, and for breaching the Court's **provisional measures orders** on preserving evidence.

On remedies the Court required **cessation** of continuing violations, **assurances of non-repetition** and **reparation**, including restitution (safe, voluntary and dignified return and family reunification) and compensation where restitution is impossible, with modalities to be worked out. Standard frame: the Convention's **Article I** obliges parties to prevent and punish;

**Article II** defines genocide by **acts plus intent**; **Article IX** gives the Court jurisdiction; and the ILC Articles on State Responsibility supply the **secondary rules** of cessation and reparation. Compare *Bosnia v. Serbia* (2007), where the Court found Serbia in breach of the duty to **prevent** and **punish** but not responsible for **committing** genocide.

## 5.COP31 Ends Without a Cover Decision: Article 9.1, Procedure and Consensus

Topic 5 · International Law — Protection and Improvement of the Human Environment: International Efforts

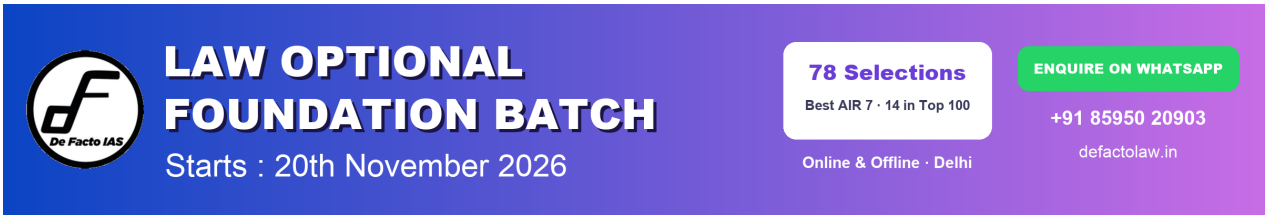
**COP31, Antalya (closed Sunday, 22 November 2026)** COP31 closed on Sunday 22 November, about **two days after its scheduled finish on 20 November**, **without adopting its cover decision**. COP President **Murat Kurum** told the plenary he understood there was **no agreement on the text**, and that "these decisions have not been adopted". The **EU, Panama, Norway, the Marshall Islands, AILAC and the least developed countries** said they could not accept the draft; Ghana, for the African Group, said it would not stand in the way of consensus but complained that **just transition** got only a single generic sentence.

The draft of 22 November (not adopted) shows what was at stake. It kept the goal of **35% electricity in final energy by 2035**, but **dropped any explicit reference to transitioning away from fossil fuels**, referring back to COP28 instead.

- It retained the aim to **at least triple adaptation finance by 2035** with **no monetary figure**, proposed an **Antalya–Addis Ababa road map** on adaptation and resilience finance, and asked the Standing Committee on Finance for a report on the **baseline** for tripling.
- On trade it repeated that climate measures, **including unilateral ones**, should not be a means of **arbitrary or unjustifiable discrimination or a disguised restriction on international trade** (the language of **Article 3(5) of the UNFCCC**) and welcomed the first **dialogue on trade and climate change**.

The finance fight was a question of **what the legal text says**. In the presidency consultations of 18 November, parties again disagreed on whether the **Climate Finance Work Programme** is about **Article 9.1** (developed countries' finance obligation, "shall provide") or **Article 9** as a whole, and on whether the **Article 2.1(c)** safeguards agreed at Belém (alignment of finance flows, with respect for national sovereignty) apply to it. The G-77/China stressed that the two agenda items have separate mandates; the EIG and Japan wanted the safeguards to apply to both.

A second fight concerned **procedure**. **Russia** proposed a draft decision on **decision-making**, reaffirming that objections formally raised by Parties must be duly considered by presiding officers before an action is concluded, citing the adoption of the **NCQG at COP29**; the EU said the draft rules of procedure are established practice. Standard frame: the UNFCCC has never adopted its rules of procedure because the **voting rule** remains unresolved, so decisions are taken by **consensus**, and **a COP decision is not itself a treaty obligation**; the binding text is **Article 9.1** of the Paris Agreement, and the dispute was over how a decision should record it.




## Weekly Focus

### Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (Advisory Opinion), ICJ Reports 1951, p. 15

**Facts:** The **Genocide Convention** (1948) contained no article on **reservations**. When some States ratified it subject to reservations and other States objected, the **General Assembly** asked the Court for an advisory opinion. The traditional rule, drawn from the League era, was that a reservation was valid only if **all contracting parties accepted it**; a reserving State that was objected to by even one party stayed outside the treaty. The questions put to the Court concerned whether a reserving State could still be regarded as a party if some States objected and others did not, the effect of the reservation between the reserving State and each kind of party, and the effect of objections made by States that had signed but not ratified, or were entitled to sign but had not.

**Question of Law:**

(1) Can a State that maintains a reservation, objected to by one or more parties but not by others, be regarded as a **party to the Convention**?

(2) If so, what is the effect of the reservation as between that State and the **objecting** parties and the **accepting** parties?

(3) What is the legal effect of an objection made by a signatory that has not yet ratified, or by a State entitled to sign or accede but that has not yet done so?

**Decision:** By **seven votes to five** the Court answered the first two questions as follows: a State which has made and maintained a reservation that has been objected to by one or more parties, but not by others, **can be regarded as a party** if the reservation is **compatible with the object and purpose of the Convention**; if it is not, the State cannot be regarded as a party.

- Each State party **appraises compatibility individually**: an **objecting State** may consider the reserving State not to be a party, while an **accepting State** may consider it a party.
- An objection by a signatory that has not ratified takes effect only on ratification; an objection by a State that has not signed has **no legal effect**. Five judges dissented, favouring the traditional unanimity rule.

**Ratio:** The Court rejected the rule of **absolute integrity** of the treaty for this Convention. Its **object and purpose** point the other way: **as many States as possible should participate**, and complete exclusion of a State would "detract from the authority of the moral and humanitarian principles" on which the Convention rests. But the same object and purpose **limit both the freedom to make reservations and the freedom to object to them**.

Therefore it is the **compatibility of a reservation with the object and purpose** of the Convention that furnishes the criterion for a State in making the reservation, and for a State in objecting to it. The absence of an article on reservations does not mean they are prohibited; the character, purpose, provisions and mode of adoption of the convention must be considered.

**Legal Significance:** The opinion's **compatibility test** was codified in **Article 19(c) of the Vienna Convention on the Law of Treaties, 1969** (a reservation is not allowed if incompatible with the object and purpose of the treaty), alongside the definition of reservation in **Article 2(1)(d)** and the procedure in **Article 23**. It replaced unanimity with a **flexible regime** that encourages wide participation, at the price of a decentralised appraisal by each State. For human rights treaties the question of invalid reservations remains live:

in *Belilos v. Switzerland* (ECtHR, 1988) the Strasbourg Court treated a Swiss "interpretative declaration" as an **invalid reservation** and severed it. This week's judgment of the ICJ in *The Gambia v. Myanmar* applies the very Convention at the centre of the 1951 opinion: the Court there found Myanmar responsible for **genocide**, **failure to prevent** and **failure to punish**, and the case was brought by a State not directly injured, on the footing that every party has an interest in compliance.

## PYQ Solution

**Explain the meaning of 'State' under Article 12 of the Constitution. When does a society or a corporation become an 'instrumentality or agency' of the State, so as to be subject to Part III? (15 MARKS)**

Fundamental rights in Part III are guaranteed **against the State**. **Article 12** defines "the State" inclusively (the Government and Parliament of India, the Government and Legislature of each State, and **all local or other authorities** within the territory of India or under the control of the Government of India), and the courts have given the phrase "other authorities" a wide reading so that rights cannot be avoided by creating a body outside the Government.

**Article 12: authority, instrumentality and agency**

1. **The text:** The definition is **inclusive**, not exhaustive. "Local or other authorities" covers bodies **within the territory of India** or **under the control of the Government of India**; the second phrase qualifies "other authorities", so an authority located outside India may still be "State".
2. **Other authorities:** Early cases read the words **ejusdem generis** with the named authorities. The Court moved to a wider test: an authority created by law with **power to make rules or regulations having the force of law** is "State" (*Rajasthan State Electricity Board v. Mohan Lal*, 1967). A body that administers a statute and exercises sovereign-type power, even if it is a society, falls within it (*Sukhdev Singh v. Bhagat Ram*, 1975). A private body discharging a public duty with regulatory functions that are the job of the Government may also qualify (*Zee Telefilms v. Union of India*, 2005).

3. **Instrumentality or agency:** The Court added the concept of the **instrumentality or agency** of the State (*R.D. Shetty v. International Airport Authority*, 1979). In *Ajay Hasia v. Khalid Mujib* (1981) it set out indicators: **State shareholding, State financial assistance** covering most expenditure, a **monopoly** status, **deep and pervasive State control**, functions of **public importance** closely related to governmental functions, and transfer of a Government department to the body.
4. **Not a mechanical checklist:** In *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology* (2002) the Court said the *Ajay Hasia* indicators are **not a rigid set**; the question is whether the body is **financially, functionally and administratively dominated by, or under the control of,** the Government, and the control must be **particular to the body and pervasive**. **Mere regulatory control** does not make a body "State", and a private institution does not become an instrumentality because of **recognition or affiliation** alone (*Unnikrishnan*, 1993).
5. **Consequences:** A body held to be "State" must observe **Articles 14 and 21** and is amenable to **writ jurisdiction** under Articles 32 and 226. Article 12 matters for **Part III**; a declaration that a body is "State" does **not** by itself make its employees civil servants under Part XIV.

**The current application:** On 6 November, in *Chairman, National Book Trust v. A.R. Abdul Gaffar* (2026 INSC 1202), the Supreme Court held that the National Book Trust, a society formed under Government resolutions, is "**State**" because Government control over it is **pervasive**. Registration as a society did not take it outside Article 12. The Court called the *Ajay Hasia* tests **indicative and not a mechanical checklist**, and confined the declaration to Part III; the Trust's staff did not become civil servants under Part XIV.

Article 12 is a question of **substance over form**: the court asks who really controls the body and what function it performs, not how it is registered. The test protects fundamental rights from being outflanked by institutional design, while the **pervasive control** requirement keeps ordinary regulated or aided bodies outside it.

De Facto IAS