Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

2nd November - 8th November, 2026

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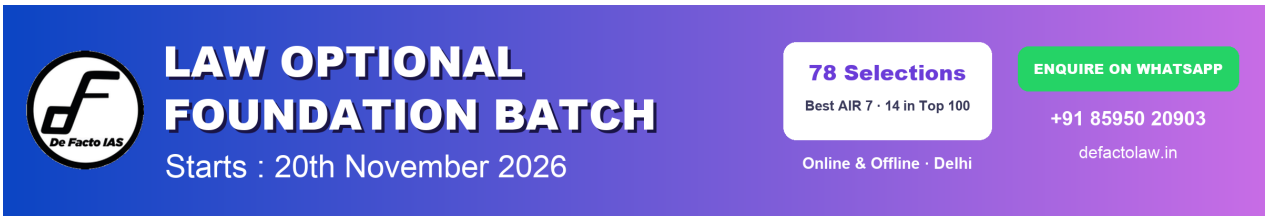

1.The Clock Starts When Liberty Stops: Article 22(2) and the Fiction of 'Formal Arrest'

Topic 1 · Constitutional Law — Fundamental Rights (Arts. 21 & 22)

Sujit Das v. Union of India (2026) **Article 22(2)** guarantees that every person **"arrested and detained in custody"** shall be produced before the nearest Magistrate within **twenty-four hours**, excluding only the time of the journey. When does that clock begin — when the police formally record an arrest, or when they first take control of a person's movement? A Bench of Justice Ujjal Bhuyan and Justice Atul S. Chandurkar answered decisively on 5 November (2026 INSC 1195): **from the moment of detention**.

The appellants had been held for about **eighteen hours** during a search-and-seizure operation before any arrest was recorded; the prosecution argued that this period, preceding formal arrest, did not count. The Court rejected the split: the words 'arrested and detained' are to be read **together**, and the Constitution knows **no detention divorced from arrest** — the distinction drawn on the basis of search and inquiry was

declared **"entirely unconstitutional."** The only time that may be excluded is the travel time to the Magistrate's court; time spent questioning or searching may not.

The Court disapproved contrary High Court views (Orissa, Kerala and Madras), approved the Kerala High Court's later reading, and directed that Magistrates must **record the actual time of detention** — and may refuse remand where even a detention within 24 hours was unreasonably prolonged. A person held beyond the constitutional limit without production must be **released**; the appellants were.

2.Where Policy Ends and Judicial Review Begins: No Mandatory Rotation of Reserved Seats

Topic 2 · Constitutional Law / Administrative Law — Separation of Powers; Judicial Restraint

Jagdish Singh v. Union of India (2026) Must constituencies reserved for Scheduled Castes and Scheduled Tribes in Parliament and the State Assemblies **rotate**, so that no general-category voter is permanently shut out of contesting from his own seat? A Bench headed by Chief Justice Surya Kant on 4 November declined to interfere with the Allahabad High Court's refusal of the plea and affirmed the validity of **Section 9(1)(c) of the Delimitation Act, 2002**.

The constitutional text drew the line. **Articles 330 and 332** fix the **number** of reserved seats in proportion to population; **Article 327** leaves the **method** of delimitation and identification of constituencies to Parliament. Rotation is therefore a matter of **legislative policy** — and courts cannot **rewrite the Constitution or a statute** to add a requirement neither contains. The Court also distinguished the **right to vote** from a claimed right to contest from a particular seat.

The petitioner was told to take his argument to elected representatives — the forum to which the Constitution assigns the choice. Notably, the Constitution itself signals the same restraint elsewhere: **Article 329(a)** places the validity of laws on delimitation and allotment of seats beyond question in any court.

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3.Permission to Hold Is Not Proof of Acquisition: Gold Circulars and Disproportionate Assets

Topic 3 · Law of Crimes — Prevention of Corruption Act, 1988 (s. 13(1)(e))

State of Bihar v. Phulpari Kumari (2026) A former Child Development Project Officer in Bihar faced prosecution for possessing assets disproportionate to her known sources of income. The Patna High Court quashed the case, holding that her household's **646.4 grams of gold** fell within the limits in a 1994 government instruction and a **2016 CBDT press release** (500g for a married woman, 250g for an unmarried woman, 100g for a man) — limits up to which jewellery is not seized in tax searches.

A Bench of Justice K.V. Viswanathan and Justice Arun Palli called this reasoning **"totally untenable"** and restored the prosecution. Under **Section 13(1)(e)**, the offence lies in possession of assets disproportionate to known income **"which the public servant cannot satisfactorily account for."** A circular that tolerates a quantity of gold in a search says nothing about **how** that gold was acquired.

The distinction the Court drew is between **possession** and **accounting**: the first is the fact that triggers the offence, the second is the burden the statute places on the public servant. A tax-administration guideline cannot discharge a statutory burden under an anti-corruption law, any more than an executive instruction can amend the ingredients of an offence.

4.Causa Causans, Not Causa Sine Qua Non: When Negligence Becomes a Crime

Topic 4 · Law of Crimes — Offences against the Human Body; Criminal Negligence & Causation

Matin Shankarrao Bhosale v. State of Maharashtra (2026) In February 2020 a Class VII student at an Adivasi ashram school in Amravati died when a **pillar under construction** on the school premises collapsed on him. The school's President and Superintendent were prosecuted for culpable homicide read with Section 34 IPC, and the Bombay High Court refused to quash the case. A Bench of Justice J.B. Pardiwala and Justice Manmohan quashed the proceedings on 2 November (2026 INSC 1198).

The Court went further than rejecting culpable homicide: even the lesser offence of **causing death by negligence (s. 304A IPC; now s. 106 BNS)** was not made out. **"Mere failure to attain the standard of care prescribed by the law"** is not by itself criminal; the death must be the **direct result** of a rash or negligent act of the accused, which must be its **proximate and efficient cause** — the principle settled in *Kurban Hussein Mohamedalli Rangawalla* (1965).

Applying the classic dichotomy, the office-bearers' lapse was at most a **causa sine qua non** — a condition without which the death would not have occurred — but not the **causa causans**, the operative cause. The construction was the **contractor's** work; that independent agency was the intervening cause that broke the chain linking the appellants to the death. The observations were expressly prima facie.

5.Common Intention Needs Company: Section 34 After the Co-Accused Are Acquitted

Topic 5 · Law of Crimes — Joint and Constructive Liability (s. 34 IPC)

Sau Kamalbai Waman Patil v. State of Maharashtra (2026) Four members of a family were tried for burning a young woman to death, all charged under **Section 302 read with Section 34 IPC**. Three were acquitted; the High Court convicted the mother-in-law alone of murder. A Bench of Justice Ujjal Bhuyan and Justice Atul S. Chandurkar set aside the conviction on 5 November (2026 INSC 1196) and restored her acquittal.

Section 34 is not a substantive offence; it is a rule of **constructive liability** that makes each participant answerable for a criminal act done by several persons **in furtherance of their common intention**. Its premise is plurality. Following *Krishna Govind Patil v. State of Maharashtra* (1962), the Court held that the acquittal of the co-accused — whether on rejection of the evidence or by benefit of doubt — means in law that **they took no part** in the offence; the common intention charged against the group therefore fails.

The case then turned on a lone conviction for murder without an independent charge: **"There was no independent charge framed under Section 302."** Where the prosecution had built its case on joint liability alone, an accused cannot be convicted of having individually committed the murder unless she had been called upon to meet that case.

6.Electing the World Court: Five Judges, Two Organs and One Deadlock

Topic 6 · International Law — United Nations: Principal Organs; Peaceful Settlement (ICJ)

Election of five Members of the International Court of Justice (3 November 2026) On 3 November the **General Assembly and the Security Council**, voting separately but simultaneously, elected five judges of the International Court of Justice for nine-year terms beginning **6 February 2027**: **Dapo Akande** (United Kingdom), **François Alabrune** (France), **Mahmoud Daifallah Hmoud** (Jordan), **Rena Lee** (Singapore) and **Phoebe Okowa** (Kenya). Four seats were filled quickly; the fifth deadlocked across rounds — the Council preferring Marcelo Vázquez-Bermúdez (Ecuador), the Assembly Okowa — until Vázquez-Bermúdez withdrew.

The procedure is set by the **ICJ Statute**. Candidates are nominated by the **national groups of the Permanent Court of Arbitration** (Art. 4); a candidate needs an **absolute majority in both organs** (Art. 10(1)); in the Council the vote is taken **without distinction between permanent and non-permanent members** — there is **no veto** in judicial elections (Art. 10(2)). Persistent deadlock may be broken by a **joint conference** of the two organs (Art. 12). The electors must ensure representation of the **main forms of civilization and the principal legal systems** of the world (Art. 9); one-third of the bench is renewed every three years (Art. 13).

Indian readers will recognise the pattern: in **2017**, the Assembly backed **Justice Dalveer Bhandari** while the Council backed the United Kingdom's candidate, until the UK withdrew — the first time a P5 member lost its seat on the Court. This year's deadlock resolved the same way, with the Assembly's choice prevailing.

The new bench inherits a Court at full stretch: its President reported a record **24 contentious cases** pending, and on the same day the Court fixed **19 November** for its merits judgment in *The Gambia v. Myanmar* under the Genocide Convention — the first Article IX case brought by a State with no direct link to the alleged acts to reach the merits.

7.Chapter VI : The Security Council on Peaceful Settlement of Disputes

Topic 7 · International Law — Peaceful Settlement of Disputes; UN Security Council

Security Council Presidential Statement S/PRST/2026/5 (5 November 2026) At its 10264th meeting on 5 November, the Security Council adopted a **presidential statement** reaffirming that States must settle their disputes by **peaceful means** in accordance with **Chapter VI** of the Charter. It lists the modes of **Article 33** — negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement and resort to regional arrangements — stresses early diplomacy, good offices and confidence-building, and asks the Secretary-General to promote dialogue and mediation.

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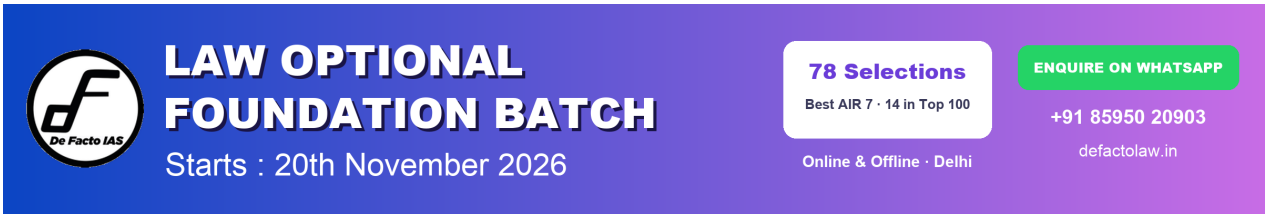
The statement links the Council's toolbox to its legal foundation: **Article 2(3)** obliges every Member to settle international disputes peacefully, and **Article 33(1)** leaves the **choice of means** to the parties. Under **Article 36(3)**, the Council should take into account that **legal disputes should as a general rule be referred by the parties to the ICJ** — and the statement underlines the Court's role **"where States consent to its jurisdiction."**

That qualification is the heart of the matter. The Court's jurisdiction rests on **consent** — by special agreement, compromissory clause or the **optional clause** declaration under Article 36(2) of the Statute — and the *Monetary Gold* principle bars it from deciding the rights of an absent State. Peaceful settlement is mandatory; any particular forum is not.

Legally, a presidential statement is **not a resolution**: it is adopted by consensus and read out by the President, and does not carry the binding force that Article 25 gives to Council decisions. Its value is political and interpretive — a consolidated restatement of the Charter's settlement architecture, adopted in the same week the Council and the Assembly were staffing the very Court the statement commends.



Weekly Focus

Nottebohm Case (Liechtenstein v. Guatemala), ICJ Reports 1955, p. 4

Facts: Friedrich Nottebohm was born in Germany in 1881 and held German nationality. In 1905 he moved to **Guatemala**, where he lived and ran his business for nearly four decades, visiting Germany occasionally and Liechtenstein only a few times. In **October 1939**, a month after the Second World War broke out, he visited Liechtenstein and applied for naturalisation, which was granted with exceptional speed. In 1943 Guatemala, by then at war with Germany, expelled him and seized his property. **Liechtenstein** brought a claim against Guatemala before the ICJ, exercising **diplomatic protection** on behalf of its new national.

Question of Law: Could the nationality conferred by Liechtenstein be **invoked against Guatemala**, so as to give Liechtenstein a sufficient title to exercise diplomatic protection on Nottebohm's behalf? Put differently: does a State's grant of nationality, valid under its own law, automatically bind other States on the international plane?

Decision: The Court upheld Guatemala's objection and held Liechtenstein's claim **inadmissible**. Naturalisation is an act within a State's **domestic jurisdiction**; the question was whether it had **international effect**. A State cannot claim recognition of its nationality rules by another State unless it has acted in conformity with the general aim of making the legal bond of nationality accord with the individual's **genuine connection** with the State.

On the facts there was **no bond of attachment** between Nottebohm and Liechtenstein, and a long-standing and close connection with Guatemala which naturalisation in no way weakened; Guatemala was under no obligation to recognise a nationality granted in such circumstances.

Ratio: Nationality is "a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties."

Conferred by a State, it entitles that State to protect the individual against another State only if it is the **translation into juridical terms** of a real connection. International law does not decide who is a national — that remains for each State — but it sets the conditions on which other States must **recognise** that decision for international purposes.

Legal Significance: The **genuine link** doctrine radiated through the law of nationality: the **Iran–United States Claims Tribunal** (Case A/18, 1984) relied on it to adopt the rule of **dominant and effective nationality** for dual nationals, and the **ILC Articles on Diplomatic Protection** (Art. 7) require 'predominant' nationality for claims against another State of nationality.

Its reach remains contested: in *Ahmadou Sadio Diallo* the DRC did not challenge Guinea's right to protect a national who had lived 32 years in the DRC, and the ILC confined the 'predominant' test to dual nationals — suggesting *Nottebohm* turned on its unusual facts rather than laying down a general rule. The question has returned in debates over **citizenship-by-investment** schemes: can a passport bought without residence be opposed to other States?

PYQ Solution

"What may be negligence in civil law may not necessarily be negligence in criminal law." Explain the essentials of causing death by negligence under Section 304A IPC (Section 106 BNS), with reference

to decided cases. (15 MARKS)

Section 304A was inserted into the Penal Code in 1870 to reach deaths caused by rash or negligent acts where the accused had **neither the intention nor the knowledge** that make a killing culpable homicide. The section is residuary: it applies only to acts **"not amounting to culpable homicide."** Its essentials are a death, caused by a rash or negligent act of the accused, falling outside sections 299 and 300.

Criminal negligence: degree and causation

1. **Rashness and negligence distinguished: Culpable rashness** is acting with the consciousness that harmful consequences may follow, in the hope that they will not; **culpable negligence** is acting without that consciousness, in circumstances where the actor has failed to exercise the caution incumbent upon him and, had he done so, would have foreseen the harm. Criminal negligence is the gross and culpable neglect to take the reasonable and proper care that it was the imperative duty of the accused to adopt.
2. **Degree — the civil/criminal divide:** Negligence in tort requires only a breach of a duty of care causing damage. For negligence to be criminal, the prosecution must prove the **existence of a duty**, its **breach causing death**, and that the breach amounted to **gross negligence** (*Malay Kumar Ganguly*, 2009). A lower degree may ground civil liability but not prosecution: for doctors, the *Bolam* standard decides civil liability, but criminal liability demands negligence of a very high degree, amounting to recklessness (*Jacob Mathew v. State of Punjab*, 2005; *Martin F. D'Souza*, 2009).
3. **Causation — causa causans:** The rash or negligent act must be the **direct and proximate cause** of death, operating **without the intervention of another's negligence**: it must be the *causa causans*, not merely the *causa sine qua non* (*Kurban Hussein Mohamedalli Rangawalla*, 1965). An intervening independent act breaks the chain.
4. **The boundary with culpable homicide:** Where the rash act is accompanied by **knowledge** that it is likely to cause death, the offence rises to **s. 304 Part II**, and with intention to s. 302 (*Alister Anthony Pareira*, 2012). Thus a drunken driver who ran over pavement-dwellers was held to have had such knowledge — negligence shades into culpable homicide as foresight increases.

The current application: This week, in *Matin Shankarrao Bhosale v. State of Maharashtra* (2026 INSC 1198), the Supreme Court quashed proceedings against a school's President and Superintendent after a student died in the collapse of a pillar under construction: their lapse was at most a *causa sine qua non*, the contractor's work the intervening cause — and "mere failure to attain the standard of care prescribed by the law" is not a crime.

Conclusion: Section 304A punishes not carelessness as such but **culpable** carelessness — gross in degree and direct in effect. The BNS (s. 106) retains the structure while raising the maximum sentence; the line it draws, between the negligence that pays damages and the negligence that is punished, remains the one the courts have drawn for a century.