Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

9th November - 15th November, 2026

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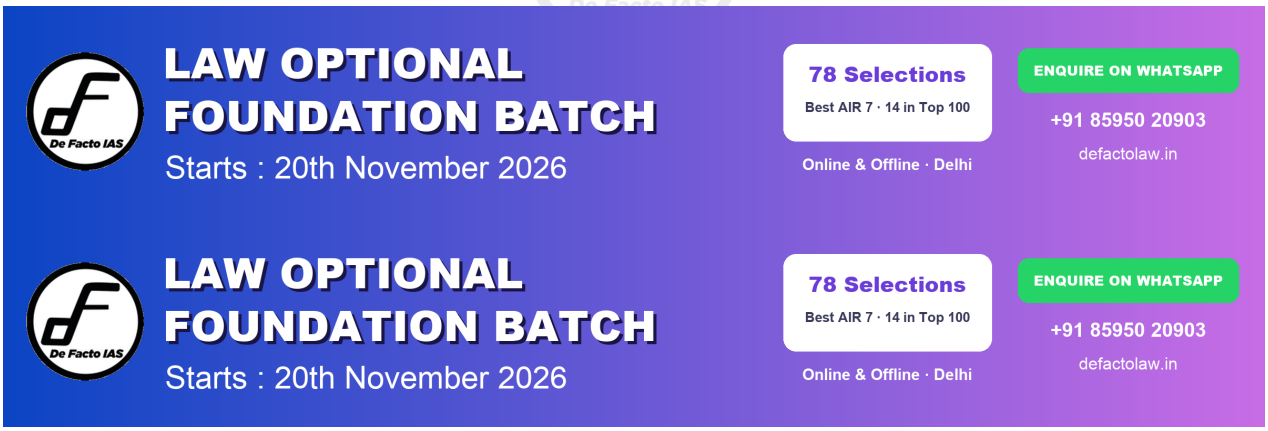

1. Reconsidering the Two-Child Disqualification for election candidates

Topic 1 · Constitutional Law — Fundamental Rights (Arts. 14 & 21); Precedent and Changed Circumstances

Mangala Bhimrao Ingle v. Additional Commissioner, Amravati (2026) Can a law that bars a person from panchayat office for having more than two children survive once the demographic premise on which it was upheld has disappeared? A Bench of Justice P.S. Narasimha and Justice Alok Aradhe, in a reportable judgment of 4 November (2026 INSC 1193), expressed the strong view that such laws **"have lost their relevance"** and referred the question to a larger Bench for reconsideration of **Javed v. State of Haryana (2003) 8 SCC 369**.

The appellant's election as Sarpanch of Kakoda Gram Panchayat had been set aside under **Section 14(1)(j-1) of the Maharashtra Village Panchayats Act, 1959**, because she had a third child, born in 2014, before contesting in 2022. *Javed* had upheld a similar disqualification under the Haryana Panchayati Raj Act,

1994, applying the **twin test of Article 14** — intelligible differentia and rational nexus with the object — and accepting that "population explosion" was an impediment to progress.

The Bench held that the premise had collapsed. India's **Total Fertility Rate has fallen from 3.02 to 1.9**, below the replacement level of 2.1. **"Even if the law was legal and valid at the time of its making, it has become invalid as the foundation on which it rested has changed."** The Court added that failure to use power to adapt to change is itself an abuse of power. On the merits it found the disqualification **manifestly arbitrary** — it excludes a class from political representation on grounds bearing little rational connection to capacity to hold office — and, under **Article 21**, it forces an unconscionable choice between **reproductive autonomy** (*Suchita Srivastava*; *X v. Principal Secretary*) and democratic participation.

Nothing is finally decided. *Javed* and *Rajbala v. State of Haryana* continue to bind until the larger Bench rules, and the High Court's order stays, so the appellant continues as Sarpanch. The reference raises a question of constitutional method: whether the **reasonableness of a classification** under Article 14 is judged once, at the date of enactment, or continuously, against the facts as they stand.

2.A Surcharge Is Still a Sales Tax: Entry 54 and the 'Tax on Tax' Argument

Topic 2 · Constitutional Law — Centre–State Legislative Relations; Taxing Entries (Arts. 246 & 265; Entry 54, List II)

Arjun Flour Mills v. State of Odisha (2026) Can a State, under **Entry 54 of List II** (taxes on the sale or purchase of goods), levy a surcharge computed not on turnover but as a percentage of the sales tax already payable? **Section 5-A of the Orissa Sales Tax Act, 1947** required dealers with gross turnover above ₹10 lakh to pay 10 per cent of the tax payable; Punjab's **Section 5(1-C)** was similar.

The assessees called it a **"tax on tax"**, for which List II has no entry. The reference began before a Two-Judge Bench in 1998, passed to a Constitution Bench in 1999 and reached a seven-judge Bench, which a Bench headed by Chief Justice Surya Kant disposed of on 4 November (2026 INSC 1192).

The Court first asked whether any conflict of precedent remained. *India Cement v. State of Tamil Nadu* (1990, seven judges) struck down a cess on royalty — not because it was computed on another levy, but because royalty was treated as a **tax in a field occupied by Parliament** under the MMDR Act (Entry 54, List I).

That premise — that royalty is a tax — was **overruled by the nine-judge Bench in *Mineral Area Development Authority v. SAIL (2024)**. Nothing therefore stood against **S. Kodar v. State of Kerala* (1974)**, where a Constitution Bench held that an additional tax computed as a percentage of sales tax payable is an **enhancement of the rate** and a tax on sales within the entry, not a tax on the dealer's income.

The framework was the settled one. **Article 246(3)** gives States exclusive power over List II; **Article 265** forbids any tax without authority of law; and the power to tax is **not incidental** to a general entry but must be traced to a **specific taxing entry**. The Court separated the **subject** of a tax from its **measure**: the surcharge attached only to a dealer already liable to sales tax and rose and fell with it, so the subject remained the sale, and the method of computation was merely the measure.

The reference was declared **infructuous**. Entry 54 in its original, general form no longer exists, having been substituted after VAT and then the GST regime, so the question has no prospective significance. Two questions peculiar to Punjab — the surcharge on **exempted units** (s. 30-AA) and whether the Social

Security cess must first enter the **Consolidated Fund** under **Article 266** — were left open for regular Benches. In a separate opinion, Justice K.V. Viswanathan likewise held *Kodar* correctly decided,

3.'Pay Minus Pension' Is Not a Variation: Article 318 and the State PSC Chairman

Topic 3 · Constitutional Law — State Public Service Commissions (Art. 318); Equal Pay (Arts. 14 & 39(d))

State of Uttarakhand v. M.C. Bhandari (2026) Lieutenant General (Retd.) M.C. Bhandari was appointed Chairman of the Uttarakhand Public Service Commission in November 2006 on a salary of ₹26,000 under **Regulation 7(1)**; under **Regulation 7(2)** his army pension (₹17,627) was deducted — the "pay minus pension" principle. A Member, Sohan Lal, was treated alike. The High Court struck Regulation 7(2) down as **ultra vires Article 14 read with Article 39(d)**, reasoning that the pension, earned for army service, had no nexus with PSC duties. A Bench of Justice S.V.N. Bhatti and Justice N.V. Anjaria reversed on 4 November (2026 INSC 1194).

Article 318 empowers the Governor to determine by regulations the number of members of a State Commission and their **conditions of service**; its proviso says those conditions **shall not be varied to a member's disadvantage after appointment**. The Court held that Regulation 7(2) only keeps the pension **in abeyance** during the tenure; it revives when the member leaves office. There is no withdrawal of pension and therefore no variation to disadvantage — a point the High Court itself had accepted. The Union Public Service Commission (Members) Amendment Regulations, 2007 carry a similar reduction.

On Article 14, the Court held that **"equal pay for equal work" has no pertinence**: the question did not arise at all. It followed *Gurmesh Prakash Bishnoi v. State of Haryana* (1998) 5 SCC 260, which dealt with Haryana PSC regulations, and noted that para 526 of the Civil Service Regulations likewise lets the authority reduce the pay of a re-employed pensioner by the amount of pension.

The respondents were also **estopped**. They accepted office in 2006 knowing the Regulations, drew the salary for more than two years and challenged the rule only near the end of the tenure. **One who participates in a game cannot later challenge the rules**, the Court said, applying the principle of **acquiescence** to service conditions. The protection of Article 318 is against changes made after appointment, not against terms known and accepted at appointment.

4.Article 9.1 Takes a Seat: Climate Finance and the COP31 Agenda Fight

Topic 4 · International Law — Protection and Improvement of the Human Environment: International Efforts

COP31, Antalya (opened 9 November 2026) COP31 opened in Antalya on 9 November (sessional period to 20 November). Türkiye hosts, with **Murat Kurum** presiding and Australia's **Chris Bowen** as president of negotiations. It is the first climate conference since the United States' withdrawal from the **Paris Agreement** took effect in January 2026. The opening plenary adopted a **contentious agenda** after negotiations, avoiding a prolonged procedural dispute.

The central fight was over a standalone **Climate Finance Work Programme**, described as a space to discuss the implementation of **Article 9.1 of the Paris Agreement**. It stems from the **COP30 Global Mutirão** decision, which set up a two-year programme. The EU argued that COP30 did not create a separate agenda item and that the programme should end within two years; India said a standalone item had been agreed. The text matters: **Article 9.1** says developed country Parties **"shall provide"** finance to developing countries, whereas Article 9.3 says they **"should"** continue to lead in **mobilising** it. Developing countries maintain that the **NCQG** of COP29 (at least $300 billion a year by 2035) does not replace the Article 9.1 obligation.

Two African Group proposals were dropped as separate items: **tripling adaptation finance** and a **dialogue on trade and climate change**; Green Climate Fund funding was moved under an existing item. The EU pointed to the existing trade-and-climate platform as the proper forum, and India expressed regret at the exclusion, having raised concerns over **unilateral trade measures such as CBAM**. The Convention supplies the legal frame: **Article 3(5) of the UNFCCC** says measures to combat climate change, including unilateral ones, should not constitute arbitrary or unjustifiable discrimination or a disguised restriction on international trade, and **Article 3(1)** places the burden of leadership on developed countries by **common but differentiated responsibilities**.

5.Freedom of Navigation in the Gulf: The Council Hears Rival Narratives

Topic 5 · International Law — Law of the Sea; United Nations Security Council

Security Council meeting on maritime insecurity in the Gulf region (13 November 2026) On 13 November, at **Bahrain's** request, the Security Council (10271st meeting) heard competing Gulf and Iranian accounts of maritime insecurity. The record recalls **Resolution 2817 (2026)** of March, which condemned Iran's attacks on its neighbours and called for navigational rights and freedoms to be respected, and a later draft on navigation in Hormuz that was **blocked by Chinese and Russian vetoes**. Khaled Khiari of the Secretariat cited IMO data of **134 incidents and 25 seafarer deaths** as of 11 November, with October the worst month for incidents against commercial shipping since February.

The **GCC** Secretary-General cited more than 7,000 Iranian missiles and drones since 28 February and rejected any **"unlawful restrictions or transit fees."** Bahrain, for the GCC, said about 1,600 vessels had been disrupted and 23,000 seafarers stranded. The **United States** spoke of unlawful mines in Hormuz and a Houthi "self-declared illegal embargo" around Bab al-Mandab; Panama said freedom of navigation cannot be held hostage. **Iran** called Resolution 2817 politically motivated, blamed US and Israeli aggression (13 June 2025 and 28 February 2026), said some Gulf States facilitated it, and demanded full **reparation**.

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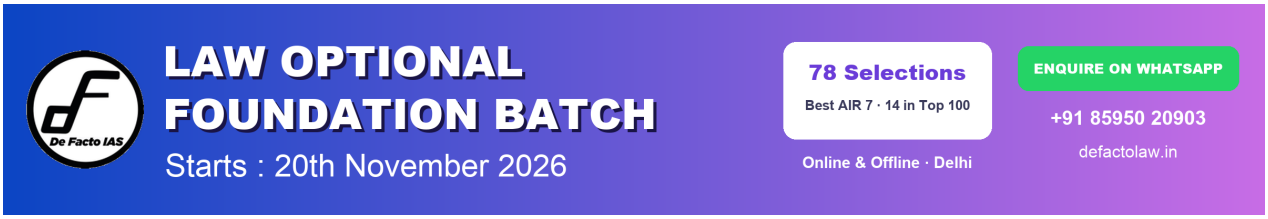
The meeting record does not itself cite the **UN Convention on the Law of the Sea**; the rules that frame the dispute are these. In a strait used for international navigation, ships and aircraft enjoy **transit passage** (**Article 38**), and strait States may not hamper it or suspend it (**Article 44**). Coastal States may not levy charges on foreign ships **by reason only of their passage** through the territorial sea, only for specific services rendered (**Article 26**) — the reason "transit fees" attract objection. Iran has signed but not ratified UNCLOS and the United States is not a party, so each side's position turns on whether these rules reflect **custom**. Alleged mines also engage the duty of a State to warn of known dangers in its waters, the principle of the *Corfu Channel* case.

The vetoes show the limit of the Council: Article 27(3) lets a permanent member stop a draft, leaving the content of navigational rights to treaty, custom and, where States consent, adjudication. Iran's demand for reparation invokes the secondary rules of **State responsibility** - cessation and full reparation for injury caused by a wrongful act - which depend on first establishing the wrongful act, the very point on which the two sides' narratives diverge.



Weekly Focus

Corfu Channel Case (United Kingdom v. Albania), ICJ Reports 1949, p. 4

Facts: On 15 May 1946 Albanian batteries fired on two British cruisers passing through the **North Corfu Strait**, and Britain asserted its right of passage. On **22 October 1946** two cruisers and two destroyers passed through again; two of the ships struck mines and were badly damaged, with heavy loss of life. In November 1946 the United Kingdom swept the channel without Albanian consent. Following a Security Council recommendation under Article 36(3) of the Charter, the UK brought the dispute to the Court — the **first contentious case** before the ICJ — and Albania accepted its jurisdiction.

Question of Law: (1) Do warships have a right of passage through a strait used for international navigation in peacetime, and was the passage of 22 October **innocent**? (2) Was **Albania responsible** under international law for the explosions in its waters? (3) Did the UK's minesweeping operation violate Albanian **sovereignty**?

Decision: On the merits (9 April 1949) the Court held that the passage was **innocent** and did not violate Albanian sovereignty. The ships were not in combat formation, their guns were in fore-and-aft position, and action stations were not unreasonable after the earlier firing. The purpose of **testing Albania's attitude** did not make the passage non-innocent. Albania was **responsible for the explosions** and bound to compensate: it had **failed to warn** approaching ships of a minefield it knew of, or must have known of. The UK's later minesweeping, however, **violated Albanian sovereignty**; the Court rejected a right of **self-help** or intervention as a policy of force that cannot find a place in international law.

Ratio: In peacetime, States have a right to send warships through **straits used for international navigation** between two parts of the high seas **without prior authorisation**, provided the passage is innocent; unless a convention says otherwise, the coastal State has **no right to prohibit** it.

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- Albania's responsibility rested on **general and well-recognized principles**: elementary considerations of humanity, the freedom of maritime communication,
- and **every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States**.
- Because direct proof of knowledge is hard where a State has **exclusive territorial control**, the Court allowed a more liberal resort to **inference and circumstantial evidence**.

Legal Significance: The **1982 UNCLOS** gave the case its modern form: innocent passage in the territorial sea (Part II, Section 3, with the exhaustive list of non-innocent acts in **Article 19(2)**), and for straits **transit passage** (**Article 38**) that cannot be suspended (**Article 44**). A 1989 **USA–USSR Joint Statement** affirms that all ships, including warships, enjoy innocent passage without prior notification or authorisation.

The obligation not to knowingly allow territory to be used against other States is the root of the **principle of prevention**, cited in *Pulp Mills* (ICJ 2010) as the origin of the due-diligence duty in environmental law. And on State responsibility, *Corfu Channel* is the case commonly cited for the view that **fault** may be required, whereas the ILC Articles take an intermediate approach. This week's Security Council debate on Gulf navigation (item 5) turns on the same rules.

PYQ Solution

Explain the doctrine of 'pith and substance' as applied to the distribution of legislative powers

between the Union and the States. How is it related to the doctrines of 'colourable legislation' and the 'aspect theory'? (15 MARKS)

Articles 246 and 254 and the **three Lists of the Seventh Schedule** distribute legislative power, but subjects overlap in life. The Constitution gives each legislature power to make laws **"with respect to"** the entries in its List, and the courts have developed the doctrine of **pith and substance** to decide which entry a law truly belongs to when it touches more than one.

Pith and substance: the true nature of the law

1. **The doctrine:** Where a law, looked at as a whole, is **in its true nature and character** a law on a matter in the legislature's own List, it is valid even though it **incidentally encroaches** on another List (*Subrahmanyan Chettiar v. Muttuswami Goundan*, Federal Court). The question is whether the law is **substantially**, and not remotely, with respect to the entry (*Bhikaji Narain Dhakras v. State of M.P.*, 1955).
2. **The test applied:** The court looks at the **true nature and character** of the legislation, not its consequences or economic effects (*Southern Pharmaceuticals and Chemicals v. State of Kerala*, 1981). Overlap must be **in law**: one transaction may attract two taxes in different aspects without either losing its distinct character (*Hoechst Pharmaceuticals v. State of Bihar*, 1983). The power over an entry carries **ancillary matters**, but the **power to tax is not incidental** and must be traced to a specific taxing entry (*State of W.B. v. Kesoram Industries*, 2004).
3. **Colourable legislation:** Pith and substance asks what the law really is; the **doctrine of colourable legislation** asks whether a legislature is doing indirectly what it cannot do directly. The court examines the **substance, not the form**, looking at the **effect and object** of the statute (*K.C. Gajapati Narayana Deo v. State of Orissa*; *Jaora Sugar Mills v. State of M.P.*, 1966). The doctrine concerns **power, not motive**: if the legislature is competent, its motive is irrelevant.

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Aspect theory: A subject that falls in one legislature's power in one **aspect** and for one purpose may fall in another's in a different aspect and purpose (*Federation of Hotel & Restaurant Association of India v. Union of India*, 1989). It deals only with **legislative competence** (*BSNL v. Union of India*, 2006), and it helps explain how Union and State laws can validly operate on the same facts.

Place in the scheme: The doctrine reconciles the **priority of List I** with State autonomy: the predominance of the Union List does not prevent a State from legislating within List II though it incidentally affects List I (*Kesoram*), and entries should be **harmonised** so that none is robbed of its content (*Calcutta Gas Co. v. State of W.B.*, 1962). **Article 254** (repugnancy) is reached only if the law is, in pith and substance, on the Concurrent List.

Recent Application: On 4 November, in *Arjun Flour Mills v. State of Odisha* (2026 INSC 1192), the Supreme Court dealt with a State surcharge computed as a percentage of sales tax payable. Applying *S. Kodar* (1974), it treated the levy as an **enhancement of the rate of a tax on sales**, falling within Entry 54 of List II: the **subject** of the tax was the sale, and the percentage was only its **measure**. The "tax on tax" label could not alter the true character of the levy.

Pith and substance, with its companions the colourable-legislation and aspect doctrines, makes the federal scheme workable. It allows incidental overlap, forbids disguised transgression and keeps each List's content intact. Courts ask what a law is about, not what it is called.