BLOGS

Legal Reasoning Questions for CLAT 2024

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PASSAGE

To be chosen as a Member of Parliament, one must (a) be a citizen of India and (b) make an oath or affirmation to bear true faith and allegiance to the Constitution of India and uphold the sovereignty and integrity of India; (b) to be of 25 years of age in the case of the Lok Sabha and 30 years in the case of the Rajya Sabha; and (c) to possess any other qualification. that Parliament may make by law.

Three disqualifications from being on the electoral roll: (a) if the person is not a citizen of India; (b) if he is of unsound mind and stands so declared by a competent court; and (c) if he is disqualified from voting under any law relating to corrupt practices and other offenses in relation to elections.

The Representation of the People Act 1951 also lists a few conditions that would disqualify an elector from voting. This includes, inter alia, that a person confined in a prison or in the lawful custody of the police (other than in preventive detention) is not eligible to vote. In 2013, the Supreme Court conflated these two conditions and declared that anyone in the lawful custody of the police would be ineligible to contest elections.

The argument offered by the Court was that such a person is ineligible to vote, and therefore will not be an elector. The eligibility requirement for a member of the Rajya Sabha was different, which required that the member had to be an elector for a parliamentary constituency in that State or Union Territory. This condition was removed, and the law now states that the person has to be an elector in any parliamentary constituency in India.

The petitioners' main justification for challenging this amendment was that the Rajya Sabha, as the Council of States, was envisioned to represent the interests of States. Any deviation from this principle would violate the principle of federalism, which was a part of the basic structure of the Constitution.

The removal of the requirement that the member should be an elector of the State (which also meant that he should be 'ordinarily resident' in that State) would deviate from the principle of federalism. The Court rejected this contention stating that the only change the amendment had made was that it had enlarged the choice of the electors, who are elected members of the State Legislative Assembly.

If they choose to do so, they could elect a person who had a nexus with the State of residence, as argued by the petitioners. Thus, according to the Court, Indian federalism did not demand that members of the Rajya Sabha belong to the State it represents.

[Extracted, with edits and revisions, from The Indian Constitution, by MR Madhavan, Oxford University Press, 2012.]

1. The U.P. Police have Vikas Dubey, a renowned gangster and thug, in custody. Due to his popularity in his hometown as the Indian Robinhood, therefore sitting in jail and with time on hand, he decided to contest elections. He completes his sentence and is released on bail. However, he is then put in jail ahead of Independence Day on the grounds of preventive detention. He wishes to cast his vote, but the concerned government official refused to let him vote on the grounds of the 2013 Supreme Court judgment. Is the government official correct in his interpretation of the judgment?

a. Vikas Dubey is a criminal and was only out on bail but is now in lockup again. Therefore, in the eyes of the law, he is in the lawful custody of the police, which proves that the government official is correct in his interpretation.

b. The government official is correct in his interpretation because Mahatma Gandhi, the father of the nation believed in non-violence, and therefore any person with a violent past should not be allowed to vote in the elections in order to preserve the sanctity of the elections.

c. The government official is incorrect in his interpretation because the 2013 judgment of the Supreme Court did not alter the Representation of the People Act, 1951, which clearly made an exception for Individuals in police custody on grounds of preventive detention.

d. The government official is incorrect in his interpretation because of the 2013 judgment of the Supreme Court clearly made an exception for Individuals out on bail to be able to contest the elections.

2. What is the eligibility requirement for a member of the Rajya Sabha, as portrayed in the passage above?

a. The person has to be an elector in any parliamentary constituency in India.

b. The member has to be an elector for the parliamentary constituency in that State or Union Territory.

c. The person cannot be in the lawful custody of the police except under preventive decision.

d. The person has to be a citizen of India and an elector in that State or UT to be eligible to stand for elections to the Rajya Sabha in India.

3. The principle of federalism forms part of the basic structure of the Constitution Can be amended to make it specifically unitary in nature, and why?

a. No, the constitution cannot be amended in so far as the basic structure of the constitution is concerned due to the principle laid down in the Kesavananda Bharati case.

b. Because of the precedent that the Kesavananda Bharati's case that Parliament could amend any part of the except the essential features of the Constitution.

c. Yes, the constitution can be amended to make it specifically unitary in nature owing to the need for centralization of power.

d. No, the Constitution cannot be amended at all since the framers of the Constitution had a vision and mission in mind that we must abide by and follow.

4. What was the main thrust of the petitioners' argument against the amendment? that allowed a person to be an elector in any parliamentary constituency in India, in order to be eligible to stand for the Rajya Sabha elections?

a. The removal of the requirement that the member be an elector of the State (which also meant that he should be 'ordinarily resident in that State) would deviate from the principle of federalism, which forms the basic structure of the Constitution.

b. Rajya Sabha, as the Council of States, was envisioned to represent the interests of States and not India.

c. Any deviation from the mentioned principle would violate the principle of federalism which was part of the basic structure of the Constitution.

d. The basic structure cannot be amended, and therefore the above amendment was void.

5. On what grounds did the Court reject the contention of the petitioners and uphold the amendment?

a. The Courts rejected the contention of the petitioner on the grounds that the Indian Federalism did not demand that the members of the Rajya Sabha belong to the state they represent.

b. The court rejected the arguments, stating that the only change the amendment had made was that it had enlarged the choice of the electors, who are elected members of the State Legislative Assembly.

c. The courts rejected the contention of the petitioner on the grounds that no fundamental right was curtailed as the electors could elect a person who had no nexus with the State of residence.

d. The courts rejected the contentions of the petitioner on the ground of national security.

ANSWERS

1. The correct option is (c)

The government official is incorrect in his interpretation because the 2013 judgment of the Supreme Court did not alter The Representation of the People Act 1951 which clearly made an exception for Individuals in police custody on grounds of preventive detention. It is supported by 'The Representation of the People Act 1951 also lists a few conditions that would disqualify an elector from voting. This includes, inter alia, that a person confined in a prison or in the lawful custody of the police (other than in preventive detention) is not eligible to vote.

Option (a) is not correct due to its ill interpretation of the facts in the passage. Option (b) is vague and cannot be assumed from the passage. Option (d) is incorrect due to misleading facts.

2. The correct option is (a)

The person has to be an elector in any parliamentary constituency in India as per ‘And the law now states that the person has to be an elector in any parliamentary constituency in India.’.

Option (b) was applicable before the amendment, Option (c) is not relevant to the eligibility requirement but rather with the disqualification to contest, and Option (d) is incorrect due to misleading information stating the law that was applicable before the amendment.

3. The correct answer is (b)

Yes, the Constitution can be amended because of the precedent set by the Kesavananda Bharati case that Parliament could amend any part of the Constitution except the essential features of the Constitution.

Option (a) and (c) have misleading facts/ incorrect information. Option (d) is vague and therefore incorrect.

4. The correct answer is option (a)

The removal of the requirement that the member should be an elector of the State (which also meant that he should be ‘ordinarily resident’ in that State) would deviate from the principle of federalism, which forms the basic structure of the Constitution. Option (b) is incorrect due to misleading information.

Option (c) is incorrect due to its incomplete nature. Option (d) is incorrect information.

5. The correct answer is option (b)

The court rejected the arguments stating that the only change the amendment had made was that it had enlarged the choice of the electors, who are elected members of the State Legislative Assembly.

Option (a) is incorrect since it does not state the grounds for rejections but is rather a conclusive statement inferred from the decisions of the state. Option (c) and (d) are incorrect due to false information.

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