

NLAT 2020 – PG – BATCH 2 QUESTION PAPER

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PASSAGE 1

3. Clause (b) of Section 7 of the Act quoted above defines the word “disqualified” to mean disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or of Legislative Council of State. Sub-sections (1), (2) and (3) of Section [x] of the Act provide that a person convicted of an offence mentioned in any of these sub-sections shall stand disqualified from the date of conviction and the disqualification was to continue for the specific period mentioned in the sub-section. However, sub-section (4) of Section [x] of the Act provides that notwithstanding anything in sub-section (1), sub-section (2) or sub-section (3) in Section [x] of the Act, a disqualification under either subsection shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court. It is this saving or protection provided in sub-section (4) of Section [x] of the Act for a member of Parliament or the Legislature of a State which is challenged in these writ petitions as *ultra vires* the Constitution.

[Excerpted from the judgment delivered by Patnaik, J., on behalf of himself and Mukhopadhaya, J., in *Lily Thomas v. Union of India and Others*, WP (C) No. 231 of 2005]

1. Which of the following is the ‘Act’ referred to in the extract above?

- (a) *The Presidential and Vice-Presidential Elections Act, 1952*
- (b) *The Representation of the People Act, 1951*
- (c) *The Delimitation Act, 2002*
- (d) *The Government of Union Territories Act, 1963*

(Answer: (b))

2. Which Section of the *Representation of the People Act, 1951* has been replaced with ‘[x]’ in the extract above?

- (a) Section 256

- (b) Section 1
- (c) Section 123
- (d) Section 8

(Answer: (d))

3. What was the Supreme Court's decision in the case of *Lily Thomas v. Union of India and Others*, WP (C) No. 231 of 2005 (the "**Lily Thomas case**") as regards the constitutional validity of S. 8(4) of the *Representation of the People Act, 1951*?

- (a) It held that the sub-section was *ultra vires* the *Constitution*.
- (b) It upheld the constitutional validity of the sub-section.
- (c) It struck down the entire section as *ultra vires* the *Constitution*.
- (d) It referred the matter to a larger bench.

(Answer: (a))

4. Article 102(2) of the Constitution states:

"(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule."

Which of the following inserted this A.102(2) to the Constitution?

- (a) The *Constitution (First Amendment) Act, 1951*
- (b) The *Constitution (Second Amendment) Act, 1952*
- (c) The *Constitution (Fifty-second Amendment) Act, 1985*
- (d) The *Constitution (Twentieth Amendment) Act, 1966*

(Answer: (c))

5. The provision of the Act mentioned in the preceding questions, which was challenged in the case of *Lily Thomas v. Union of India and Others*, WP (C) No. 231 of 2005 (the "**Lily Thomas case**") provided that a disqualification under sub-sections (1), (2), or (3) of the same Section "shall not, in the case of a person who on the date of conviction is a member of Parliament or the Legislature of a State, take effect until [y] months have elapsed from that date, or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court." What number of months has been replaced with '[y]' in the preceding quote?

- (a) 3
- (b) 6

- (c) 9
- (d) 12

(Answer: (a))

6. In the Lily Thomas case, what was the Court's pronouncement on the question of whether the conditions for disqualification of a person to be chosen as a member of a House of Parliament, and for the disqualification of a person to be chosen as a member of a State Legislature, could be different?

- (a) That they could vary, but only in the case of Union Territories.
- (b) That they could vary, but only in the case of those states that have a Legislative Council.
- (c) That they may vary.
- (d) That they have to be the same.

(Answer: (d))

7. Upon which of the following decisions did the Supreme Court rely in the Lily Thomas case in support of the proposition that "Parliament thus does not have the power under... the Constitution to make different laws for a person to be disqualified for being chosen as a member and for a person to be disqualified for continuing as a member of Parliament or the State Legislature."

- (a) *Minerva Milla v. Union of India*, AIR 1980 SC 1789
- (b) *I.C. Golaknath and Others v. State of Punjab and Another*, 1967 AIR 1643
- (c) *Election Commission, India v. Saka Venkata Rao*, AIR 1953 SC 210
- (d) *Union of India v. K. Lakshminarayanan*, SLP (C) 12072/2019

(Answer: (c))

8. On which date, according to the decision in the Lily Thomas case, would the seat of a member of Parliament or of a state legislature who becomes subject to any of the disqualifications under the first clause of Article 102 and the first clause of Article 191 of the *Constitution*, fall vacant?

- (a) On the date on which the President or the Governor, as the case may be, has taken a decision as regards the disqualification.
- (b) On the date on which the member incurs the disqualification.
- (c) The Court did not pronounce anything upon the matter.
- (d) None of the above.

(Answer: (b))

9. What did the Supreme Court decide in the Lily Thomas case as regards whether its decision in that case would apply to “sitting members of Parliament and State Legislatures who have filed appeals or revisions against their conviction within a period of three months and their appeals and revisions are still pending before the concerned court”?

- (a) The Court held that the matter should be decided by Parliament.
- (b) The Court left the decision to Parliament and the respective state legislatures.
- (c) The Court held that they would not be affected by the decision in the Lily Thomas case.
- (d) The Court held that the decision would also apply to them.

(Answer: (c))

10. Which among the following bills (later withdrawn), introduced after the pronouncement in the Lily Thomas case, provided a 90-day period to convicted legislators to appeal and obtain a stay on their conviction or sentence?

- (a) *The Protection of Human Rights (Amendment) Bill, 2018*
- (b) *The Representation of the People (Second Amendment and Validation) Bill, 2013*
- (c) *The Election and Other Related Laws (Amendment) Bill, 2003*
- (d) *The Citizenship (Amendment) Bill, 2016*

(Answer: (b))

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## PASSAGE 2

3. This experience revealed to us the need for the insulation of these agencies from any extraneous influence to ensure the continuance of the good work they have commenced. It is this need which has impelled us to examine the structure of these agencies and to consider the necessary steps which would provide permanent insulation to the agencies against extraneous influences to enable them to discharge their duties in the manner required for proper implementation of the rule of law. Permanent measures are necessary to avoid the need of every matter being brought to the court for taking ad hoc measures to achieve the desired results. This is the occasion for us to deal with the structure, Constitution and the permanent measures necessary for having a fair and impartial agency. The faith and commitment to the rule of law exhibited by all concerned in these proceedings is the surest guarantee of the survival of democracy of which rule of law is the bedrock. The basic postulate of the concept of equality: 'Be you ever so high, the law is above you', has governed all steps taken by us in these proceedings.

### Facts

4. A brief narration of the facts of this case is necessary; On 25th March, 1991, one Ashfak Hussain Lone, alleged to be an Official of the terrorist organisation Hizbul Mujahideen, was arrested in Delhi. Consequent upon his interrogation, raids were conducted by the Central Bureau of Investigation (CBI) on the premises of Surender Kumar Jain, his brothers, relations and businesses. Along with Indian and foreign currency, the CBI seized two diaries and two note books from the premises. They contained detailed accounts of vast payments made to persons identified only by initials. The initials corresponded to the initials of various high ranking politicians, in power and out of power, and of high ranking bureaucrats. Nothing having been done in the matter of investigating the Jains or the contents of their diaries, the present writ petitions were filed on 4th October, 1993, in the public interest under Article 32 of the Constitution of India.

5. The gist of the allegations in the writ petitions is that Government agencies like the CBI and the revenue authorities had failed to perform their duties and legal obligations inasmuch as they had failed to investigate matters arising out of the seizure of the "Jain diaries"; that the apprehension of terrorists had led to the discovery of financial support to them by clandestine and illegal means using tainted funds obtained through 'havala' transactions; that this had also disclosed a nexus between politicians, bureaucrats and criminals, who were recipients of money from unlawful sources, given for unlawful consideration; that the CBI and other Government agencies had failed to investigate the matter, take it to its logical conclusion and prosecute all persons who were found to have committed an offence; that this was done with a view to protect the persons involved, who were very influential and powerful; that the matter disclosed a nexus between crime and corruption at high places in public life and it posed a serious threat to the integrity, security and economy of the nation; that probity in public life, the rule of law and the preservation of democracy required that the Government agencies be compelled to duly perform their legal obligations and to proceed in accordance with law against every person involved, irrespective of where he was placed in the political hierarchy.

[Excerpted from the judgment delivered by Verma, C.J., on behalf of himself, Bharucha, J., and Sen, J., in *Vineet Narain and Others v. Union of India and Others*, WP (Crl.) Nos. 340-343 of 1993]

1. In the case of *Vineet Narain and Others v. Union of India and Others*, WP (Crl.) Nos. 340-343 of 1993 (the “**Vineet Narain case**”), which of its previous judgments did the Supreme Court refer to in relation to its pronouncements about the nature of the duty and functions of police officers in the investigation of an offence?

- (a) *RG Anand v. Deluxe Films*, AIR 1978 SC 1613
- (b) *IC Golaknath v. State of Punjab*, 1967 AIR 1643
- (c) *Union of India and Others v. Sushil Kumar Modi and Others*, 1997 CriLJ 1168
- (d) *SR Bommai v. Union of India*, [1994] 2 SCR 644

(Answer: (c))

2. The validity of Directive No. 4.7(3) in a consolidated set of instructions issued to the Central Bureau of Investigation (the “**CBI**”) by various Ministries and Departments in relation to the requirement of the prior sanction of the designated authority to initiate investigation against officers of the Government and Public Sector Undertakings, and nationalised banks, above a certain level, was challenged in the *Vineet Narain* case. What was the name of this consolidated set of instructions?

- (a) Single Directive
- (b) Investigation Framework
- (c) Investigation Notification
- (d) Consolidated Directive

(Answer: (a))

3. What was the Supreme Court’s decision in the *Vineet Narain* case as regards the validity of Directive No. 4.7(3), mentioned in the preceding question?

- (a) The Court did not decide upon the matter.
- (b) The Court struck down the Directive.
- (c) The Court upheld the validity of the Directive.
- (d) None of the above

(Answer: (b))

4. The requirement of prior approval from the Central Government for initiating investigation in Directive 4.7(3), as described in the preceding questions, was later sought to be reinstated as

Section 6-A of the *Delhi Police Special Establishment Act, 1946*. By way of which of the following legislation was this sought to be done?

- (a) The *Central Vigilance Commission Act, 2003*
- (b) The *Constitution (100<sup>th</sup> Amendment) Act, 2015*
- (c) The *New Delhi Municipal Council (Amendment) Act, 2011*
- (d) The *Enemy Property (Amendment and Validation) Act, 2017*

(Answer: (a))

5. In which of the following cases was the validity of Section 6-A of the *Delhi Police Special Establishment Act, 1946*, mentioned in the preceding question, challenged?

- (a) *Mohini Jain v. State of Karnataka*, 1992 AIR 1858
- (b) *Dr. Subramanian Swamy v. Director, Central Bureau of Investigation and Another*, WP (C) No. 21 of 2004
- (c) *Shreya Singhal v. Union of India*, WP (CrI.) No. 167 of 2012
- (d) *Sarla Mudgal and Others v. Union of India*, AIR 1995 SC 1531

(Answer: (b))

6. What was the decision of the Supreme Court as regards the validity of Section 6-A(1) of the *Delhi Police Special Establishment Act, 1946* in the case mentioned in the preceding question?

- (a) The Court did not decide the matter.
- (b) The Court held that it was valid.
- (c) The Court held that it was violative of Article 14 of the Constitution.
- (d) The Court held that it was violative of Article 32 of the Constitution.

(Answer: (c))

7. Which of the following cases was distinguished in the Vineet Narain case as having no application in relation to the matter under discussion in the Vineet Narain case?

- (a) *Navtej Singh Johar and Others v. Union of India through Secretary Ministry of Law and Justice*, WP (CrI.) No. 76 of 2016
- (b) *Government of NCT of Delhi v. Union of India and Another*, C.A. No. 2357 of 2017
- (c) *T.S.R. Subramanian and Others v. Union of India and Others*, WP (C) No. 82 of 2011
- (d) *K. Veeraswami v. Union of India and Others*, 1991 SCR (3) 189

(Answer: (d))

8. Which of the following did the Supreme Court direct should be given statutory status, in the Vineet Narain case?

- (a) Defence Intelligence Agency
- (b) Directorate of Standardisation
- (c) Office of the Chief Administrative Officer
- (d) The Central Vigilance Commission

(Answer: (d))

9. In the Vineet Narain case, the Supreme Court directed that the Director of the CBI shall have a minimum tenure of how many years?

- (a) 10
- (b) 2
- (c) 5
- (d) None of the above

(Answer: (b))

10. In addition to the CBI, the Supreme Court also issued directions in relation to which of the following in the Vineet Narain case?

- (a) The Enforcement Directorate
- (b) The Indian Revenue Service
- (c) The Central Board of Excise and Customs
- (d) The Department of Divestment

(Answer: (a))

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## PASSAGE 3

24. A conspectus of all the aforesaid judgments would show that in a society which has moved away from being a simple agrarian society to a complex modern society in the computer age, the earlier simple test of control, whether or not actually exercised, has now yielded more complex tests in order to decide complex matters which would have factors both for and against the contract being a contract of service as against a contract for service. The early 'control of the employer' test in the sense of controlling not just the work that is given but the manner in which it is to be done obviously breaks down when it comes to professionals who may be employed. A variety of cases come in between cases which are crystal clear - for example, a master in a school who is employed like other employees of the school and who gives music lessons as part of his employment, as against an independent professional piano player who gives music lessons to persons who visit her premises. Equally, a variety of cases arise between a ship's master, a chauffeur and a staff reporter, as against a ship's pilot, a taxi driver and a contributor to a newspaper, in order to determine whether the person employed could be said to be an employee or an independent professional. The control test, after moving away from actual control of when and how work is to be performed to the right to exercise control, is one in a series of factors which may lead to an answer on the facts of a case slotting such case either as a contract of service or a contract for service. The test as to whether the person employed is integrated into the employer's business or is a mere accessory thereof is another important test in order to determine on which side of the line the contract falls. The three-tier test laid down by some of the English judgments, namely, whether wage or other remuneration is paid by the employer; whether there is a sufficient degree of control by the employer and other factors would be a test elastic enough to apply to a large variety of cases. The test of who owns the assets with which the work is to be done and/or who ultimately makes a profit or a loss so that one may determine whether a business is being run for the employer or on one's own account, is another important test when it comes to work to be performed by independent contractors as against piece-rated labourers. Also, the economic reality test laid down by the U.S. decisions and the test of whether the employer has economic control over the workers' subsistence, skill and continued employment can also be applied when it comes to whether a particular worker works for himself or for his employer... No one test of universal application can ever yield the correct result. It is a conglomerate of all applicable tests taken on the totality of the fact situation in a given case that would ultimately yield, particularly in a complex hybrid situation, whether the contract to be construed is a contract of service or a contract for service. Depending on the fact situation of each case, all the aforesaid factors would not necessarily be relevant, or, if relevant, be given the same weight. Ultimately, the Court can only perform a balancing act weighing all relevant factors which point in one direction as against those which point in the opposite direction to arrive at the correct conclusion on the facts of each case.

[Excerpted from the judgment delivered by Nariman, J., on behalf of himself and Bhat, J., in *Sushilaben Indravadan Gandhi and Another v. The New India Assurance Company Limited and Others*, CA No. 2235 of 2020]

1. The case of *Sushilaben Indravadan Gandhi and Another v. The New India Assurance Company Limited and Others*, CA No. 2235 of 2020 (the “**Sushilaben case**”) related to an insurance claim for compensation upon the death of an individual (the “**deceased**”) while travelling in a vehicle owned by the Rotary Eye Institute, Navsari (the “**Institute**”); which among the following was in issue in the Sushilaben case?
  - (a) Whether the insurance policy obtained by the Institute in relation to the vehicle in which the deceased was travelling at the time of his death, was in subsistence at that time.
  - (b) Whether the contract between the deceased and the Institute was a contract for service or a contract of service.
  - (c) Whether the vehicle in which the deceased was travelling at the time of his death was in proper running order at that time.
  - (d) Whether there was a valid contract in force between the deceased and the Institute at the time of the incident leading to the death of the deceased.

(Answer: (b))

2. What was the Supreme Court’s decision as regards whether the contract between the deceased and the Institute was one of service, or for service, in the Sushilaben case?
  - (a) The Court held that it was not possible to determine the matter in that case.
  - (b) The Court did not decide upon the matter.
  - (c) The Court held that the contract was of service.
  - (d) The Court held that the contract was one for service.

(Answer: (d))

3. Which among the following cases did the Supreme Court not refer to in the Sushilaben case in relation to the tests laid down to determine whether a contract would be one of service or one for service?
  - (a) *Dharangadhara Chemical Works Limited v. State of Saurashtra*, 1957 SCR 158
  - (b) *Chintaman Rao v. State of M.P.*, 1958 SCR 1340
  - (c) *Birdhichand Sharma v. First Civil Judge*, (1961) 3 SCR 24
  - (d) None of the above

(Answer: (d))

4. Which among the following cases required the Supreme Court to “determine whether there is a relationship of employer and an employee between a tailoring shop and persons employed by the owner of the shop for stitching purposes under Section 2(14) of the Andhra Pradesh (Telangana Area) Shops and Establishments Act, 1951”, and which was described by the

Supreme Court in the Sushilaben case as being of “seminal importance in deciding which side of the line a particular set of facts would lead to a conclusion that a contract is one for service or of service”?

- (a) *Silver Jubilee Tailoring House v. Chief Inspector of Shops & Establishments*, (1974) 3 SCC 498
- (b) *Tin Plate Dealers Association (Private) Limited v. Satish Chandra Sanwalka*, (2016) 10 SCC 1
- (c) *Jai Mahal Hotels (Private) Limited v. Devraj Singh*, (2016) 1 SCC 423
- (d) *Hari Sankaran v. Union of India*, (2019) 6 SCC 584

(Answer: (a))

5. In the Sushilaben case, which among the following did the Supreme Court state in relation to the ‘control of the employer’ test, used in certain instances in the past to determine whether a contract is one for service or of service?

- (a) That it is one in a series of factors which may lead to an answer on the facts of a case slotting such case either as a contract of service or a contract for service.
- (b) That it is the only reliable and conclusive test to determine whether a contract can be slotted as either as a contract of service or a contract for service.
- (c) That it should not be relied upon at all to determine whether a contract can be slotted as either as a contract of service or a contract for service.
- (d) That it should be discarded entirely from the jurisprudence relating to the issue.

(Answer: (a))

6. The claim for compensation in the Sushilaben case was first raised under Section 166 of the *Motor Vehicles Act, 1988* before the Tribunal. Which of the following cases, according to the judgment of the Supreme Court in the Sushilaben case, did the Tribunal rely upon to arrive at the figure of the monthly income of the deceased?

- (a) *Export Credit Guarantee Corporation of India Limited v. Garg Sons International*, (2014) 1 SCC 686
- (b) *DDA v. Skipper Construction*, (2007) 15 SCC 601
- (c) *Sarla Verma v. DTC*, (2009) 6 SCC 121
- (d) *Ranganayakamma v. KS Prakash*, (2008) 15 SCC 673

(Answer: (c))

7. In the Sushilaben case, the Supreme Court stated that it is well-settled that exemption of liability clauses in insurance contracts are to be construed in the case of ambiguity:

- (a) *ejusdem generis*

- (b) *contra proferentem*
- (c) *res ipsa loquitur*
- (d) *assentio mentium*

(Answer: (b))

8. Which among the following is the most accurate English translation of the maxim or rule discussed in the immediately preceding question?

- (a) No one is judge in his own cause
- (b) Of the same kind
- (c) Against the offeror
- (d) Meeting of the minds

(Answer: (c))

9. Which of the following cases did the Supreme Court refer to in relation to the principle that exemption of liability clauses in insurance contracts are to be construed in the case of ambiguity in accordance with the maxim or rule discussed in the two immediately preceding questions?

- (a) *Rev. Stanislaus v. State of Madhya Pradesh*, 1977 SCR (2) 611
- (b) *General Assurance Society Limited v. Chandumull Jain*, (1966) 3 SCR 500
- (c) *ABC v. The State (NCT of Delhi)*, 2015 SCC OnLine SC 609
- (d) *Justice KS Puttaswamy (Retired) and Another v. Union of India and Others*, WP (C) No. 494 of 2012

(Answer: (b))

10. In the Sushilaben case, what did the Supreme Court hold as regards the determination of a contract as being 'for service' or 'of service' in the context of a beneficial legislation being applied to weaker sections of society?

- (a) That the context of such beneficial legislation should be ignored altogether.
- (b) That in such cases, the issue is impossible to determine.
- (c) That in such cases, the balance tilts in favour of declaring the contract to be one of service.
- (d) That in such cases, the balance tilts in favour of declaring the contract to be one for service.

(Answer: (c))

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