

(2019) 02 P&H CK 0299
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2943 Of 2019

Mahipal Singh And Others

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 13-02-2019

Acts Referred:

Transfer Of Property Act, 1882 — Section 3, 60, 67
Code Of Civil Procedure, 1908 — Section 2(2)
Code Of Criminal Procedure, 1973 — Section 125, Order 7 Rule 6
Specific Relief Act, 1963 — Section 12, 12(1), 12(2)
Indian Penal Code, 1860 — Section 82
Limitation Act, 1963 — Section 3, 14
Evidence Act, 1872 — Section 27, 105, 145
Specific Relief Act, 1963 — Section 6
Hindu Succession Act, 1956 — Section 4, 10

Citation : (2019) 02 P&H CK 0299

Hon'ble Judges : Rakesh Kumar Jain, J;Harnaresh Singh Gill, J

Bench : Division Bench

Advocate : Vishal Garg Narwana, Sourabh Goel, Deepanshu Matya, Gurjinder Singh Chahal, Gurinder Pal Singh, Kanav Bansal, Khushbir K. Bhullar, Piyush Setia, Ravish Bansal, Jatinderpal Singh, Sandeep Moudgil, H.N.Mehtani, Kanwal Goyal, Munisha Gandhi

Judgement

Rakesh Kumar Jain, J

This order shall dispose of a bunch of 8 writ petitions bearing CWP Nos.2943, 3287, 3407, 3609, 3655, 3675, 3676 and 3870 of 2019, in which various issues have been raised by the petitioners. However, for the sake of convenience, the facts are being extracted from the lead case bearing CWP No.2943 of 2019, in which the respondents have filed their reply.

In brief, the Haryana Public Service Commission (hereinafter referred to as the "Commission") issued an advertisement no.6 of 2016 on 20.03.2017, inviting applications from the eligible candidates to fill up 109 posts of Civil Judge (Junior Division) in the cadre of Haryana Civil Services (Judicial Branch). The category-

wise break-up of the aforesaid 109 posts is as under:-

Sr.

Category

No. of

Remarks

No.

posts

1.

General

49

Out of these posts, 29 posts are being advertised for the second time.

2.

Scheduled Castes of Haryana

14

All posts are being advertised for the second time.

3.

Backward

Classes

(A)

of

08

Out of these posts, 4 posts are Haryana being advertised for the second time.

4.

Backward

Classes

(B)

of

05

Out of these posts, 02 posts are
Haryana

being advertised for the second
time

5.

Economically

Backward

08

Out of these posts, 05 posts are
Person in General Category

being advertised for the second
time

6.

Ex-Servicemen of Haryana

16

Out of these posts, 02 posts are
being advertised for the fourth

time, 04 posts are being
advertised for the third time, 05
posts are being advertised for
the second time.

7.

Physical Handicapped persons

09

Out of these posts, 01 post is
of Haryana

being advertised for the fourth
time, 01 post is being
advertised for the third time, 03
posts are being advertised for
the second time.

Total

109

It is provided in the advertisement that selection of the suitable candidates for appointment in the cadre of Haryana Civil Services (Judicial Branch) will be made by holding the examination, which shall be conducted in three stages, namely, (i) Preliminary Examination; (ii) Main Examination, and

(iii) Viva-Voce. The syllabus for preliminary examination was also provided in para 12 of the said advertisement, which read as under:-

"12. Syllabus for Preliminary Examination: The Preliminary Examination shall be of objective type with multiple-choice questions as distinguished from the main written examination which shall be of subjective/narrative type. The OMR Sheets (Answer Sheets) will be scanned by Computer. So there is no provision of re-checking/re-evaluation of OMR Sheets. The question paper for Preliminary Examination shall be of two hours duration. It shall consist of 125 questions and each question shall carry 04 marks and for every wrong answer 0.80 mark shall be deducted. There will, however, be no negative marking in respect of un-attempted questions. 5 The objective type multiple-choice question for the Preliminary Examination shall be from the syllabus for the Main Examination. The candidate shall be expected to have a general and basic over view of the main subjects and also the ability to answer questions on current events of national and international importance, Indian legal and constitutional history and governance. The candidate shall also be tested for his analytical skills, reasoning and aptitude. The standard of the question paper shall be of Law graduate level. The object of the Preliminary Examination is to short list the candidates for the Main Examination. No candidate shall be allowed to appear in the Main Examination unless he/she secured minimum 150 marks (read 100 marks for all reserved category candidates) in the Preliminary Examination. The marks obtained in the Preliminary Examination shall not be counted towards final result. Candidates equal to 10 times the number of vacancies advertised, selected in order of their merit in the respective categories shall become eligible to sit in the Main Written Examination. However, the number shall be subject to variation. If two or more candidates at the last number (the number at the end) get equal marks, then all of them shall be considered eligible to sit in the Main Examination, warranting the corresponding increase in the stipulated ratio."

In continuation of the aforesaid advertisement, the Commission issued a

corrigendum on 27.08.2018, by which the total number of posts were reduced from 109 to 107 and the category of EBP(G) was abolished and specific notes were added, which read as under:-

"Note I:- Those candidates who had applied earlier against Advertisement No. 6 of 2016 published on 20.03.2017 need not to apply afresh. The terms and conditions regarding eligibility for these candidates shall remain same as detailed in advertisement published on 20.03.2017.

Note II:- As per new reservation policy of the State Government, EBP(G) Category is not in existence after 07.12.2017, Hence, 08 posts reserved for EBP(G) category in advertisement No. 6 of 2016 published on 20.03.2017 have been released and merged in General/Unreserved category. The EBP(G) category candidates who had earlier applied will be considered in the General Category if they fulfill all eligibility conditions as meant for General category candidates except fee."

In response to the aforesaid advertisement, the Commission received 32230 applications. The preliminary examination of the said applicants was held on 22.12.2018. The question paper of the preliminary examination was set in the form of four question booklets, to which paper code was given as 'A', 'B', 'C' and 'D'. All the question papers were of 125 questions, carrying four marks each, maximum 500 marks and time of two hours was allowed to attempt the said paper. It was made clear to the candidates that they have to choose the best option out of the options given as answer to a particular question. The answer key of the examination held on 22.12.2018 was uploaded on the website of the High Court on 23.12.2018 and a separate notice was given for the purpose of inviting objections, if any, to the answer key, for which 10 days' time was provided. Admittedly, 2203 emails were received by the High Court raising anomalies in the formation of answer options of 91 questions. All the objections were dealt with by the Recruitment Committee of the High Court comprising of five Hon'ble Judges and a decision was taken on 11.01.2019 to delete six questions and revise the answer key of 8 questions. The chart of the deleted as well as revised questions, which is provided in the reply of the respondents, is reproduced as under for ready reference:-

"After perusal of objections as detailed in Annexure 'A', the Committee has found anomaly in the formation of answer options of six questions of Code 'A' question paper. The Committee, therefore, resolves that the following six questions be deleted with the consequences that no credit or discredit in respect of these questions be given irrespective of the fact whether these have been attempted or not.

Code 'A'

Code 'B'

Code 'C'

Code 'D'

Question No.

35

70

80

95

Question No.

53

108

118

8

Question No.

56

121

6

21

Question No.

61

116

1

16

Question No.

100

55

65

80

Question No.

118

13

23

38

The Committee also finds certain anomalies in the proposed answer key in respect of some other questions. The Committee, therefore, recommends change to the answer options of the following eight questions:-

Code

Code

Code

Code

Proposed

Proposed

'A'

'B'

'C'

'D'

Answer

change of

Key

option

Question No.

3

8

18

33

D

A

Question No.

12

27

37

52

C

B

Question No.

13

28

38

53

C

A

Question No.

39

79

89

104

A

C

Question No.

85

105

95

110

A

A

Question No.

102

42

52

67

C

A

Question No.

111

21

31

46

A

B

Question No.

113

23

33

48

B

D

Thereafter, the High Court uploaded the revised proposed answer key on the website of the High Court on 11.01.2019 again inviting objections upto 10.00 am on 14.01.2019. This time, 407 emails, raising cross-objections were received and after re-consideration of the matter, the Committee found that Option 'A' of question No.85 of Question Booklet Code 'A', which originally appeared in the proposed answer key, would be the right answer. However, the Committee did not find any substance in rest of the cross-objections and, therefore, direction was issued to finalize the result. The said decision was taken on 14.01.2019 and accordingly, the result was declared on 16.01.2019 and the final answer key was uploaded on the website of the High Court on 17.01.2019. It was decided by the Commission to invite 10 times of the candidates of the available posts in each category, for undertaking the main written examination, for which different cut off was provided. For example, there are 75 posts of general category, the Commission has invited 750+14 (total 764) candidates with the cut off 326.40 marks. In the category of Scheduled Castes, there were 14 posts and accordingly, 140 candidates plus 3 bracketed are invited to undertake the main written examination.

After the cut off was declared, the present petitions have been filed which have been clubbed together as the issues involved in all the petitions are similar. However, the respondents have chosen to file reply in one of the petitions because in most of the cases, the petitioners have raised the question of jurisdiction of the respondents to delete the questions, some questions have wrongly been deleted without there being any ambiguity, the answer key has

wrongly been changed, some of the questions were out of syllabus and certain questions require revision, which has not been taken into consideration by the respondents while deciding their objections filed twice.

We have heard learned counsel for the parties in detail and from their respective arguments formulate the following four questions for the purpose of adjudication:-

1. Whether the respondents had the jurisdiction to delete the questions which were allegedly ambiguous or where there were more than two correct answers in the answer key and as to whether with the deletion of the questions, the candidate who had rightly answered the question has been put to a disadvantage as against the candidate who had wrongly answered the question for which he is liable to be penalized by negative marking or that the candidate who has not attempted the question has got the advantage?
2. Whether two questions No.28 and 58 in Question Booklet Code `A' have been set by the respondents out of syllabus which is contrary to Clause 12 of the advertisement?
3. Whether the respondents have erred in revising the answer key of 8 questions despite the fact that the answers are demonstrably and palpably erroneous?
4. Whether the questions disputed by the petitioners also require revision at the hands of the respondents because the final revised answer key of the said questions also are demonstrably erroneous and escaped the notice of the Recruitment Committee?

In regard to the first question, Shri Sourabh Goel, learned counsel appearing on behalf of one of the petitioners, has submitted that the respondents have not referred to any rule which permits deletion of an ambiguous or defective question, rather the proper course should have been for the candidates to have applied to the Court for such recourse. In support of his submissions, he has relied upon a judgment of the Supreme Court rendered in the case of *Guru Nanak Dev University vs. Saumil Garg*, (2005) 13 SCC 749.

In this regard, learned senior counsel appearing on behalf of the respondents has submitted that all the deleted questions were either ambiguous or were having more than one correct answers or serious spelling mistake, whereas in the question booklet, it has been specifically mentioned as one of the instructions that the candidate/examinee has to choose one of the best answer. To support her submissions, learned counsel for the respondents has relied upon the following decisions:-

1. *Ran Vijay Singh and others vs. State of U.P. and others*, 2018 AIR (SC) 52;
2. *Richal & Ors. Etc. Etc. vs. Rajasthan Public Service Commission & Ors. Etc. Etc.*, 2018(2) S.C.T. 773;
3. *Varun Chandiok vs. Haryana Public Service Commission and another*, 2015(3)

S.C.T. 826; and

4. Monika Goyal and others vs. State of Punjab and others, 2017(3) SCT 289. Learned senior counsel for the respondents has submitted that in Ran Vijay Singh's case (supra), the dispute was in regard to re-evaluation of the disputed questions and re-examination of the answer sheets. In the said case, Hon'ble the Supreme Court has laid down certain conclusions, which read as under:-

"....(i) If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it; (ii) If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the Court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalization" and only in rare or exceptional cases that a material error has been committed; (iii) The Court should not at all re-evaluate or scrutinize the answer sheets of a candidate - it has no expertise in the matter and academic matters are best left to academics; (iv) The Court should presume the correctness of the key answers and proceed on that assumption; and (v) In the event of a doubt, the benefit should go to the examination authority rather than to the candidate."

She has further referred to para 31 of the said judgment to contend that the Supreme Court has considered the process of deletion as one of the ways out and the exact language used by the Supreme Court is that "this Court has shown one way out of an impasse - exclude the suspect or offending question".

In Richal's case (supra), Hon'ble the Supreme Court was also dealing with the scope of judicial review of opinion of the subject expert. Learned counsel for the respondents has pressed paras 24 and 25 of the said judgment, which read as under:-

"24. One of the submissions raised by the appellants is that marks of deleted questions ought not to have been redistributed in other questions. It is submitted that either all the candidates should have been given equal marks for all the deleted questions or marks ought to have been given only to those candidates who attempted those questions.

25. The questions having been deleted from the answers, the question paper has to be treated as containing the question less the deleted questions. Redistribution of marks with regard to deleted questions cannot be said to be arbitrary or irrational. The Commission has adopted a uniform method to deal with all the candidates looking to the number of the candidates. We are of the view that all the candidates have been benefited by the redistribution of marks in accordance with the number of correct answers which have been given by them. We, thus, do not find any fault with redistribution of marks of the deleted marks. The High Court has rightly approved the said methodology."

In Varun Chandiok's case (supra), the judgment relied upon by the counsel for the petitioners in Guru Nanak Dev University's case (supra) has been referred to in extenso and the following observations have been made:-

7. In Guru Nanak Dev University's case (supra), the Punjab Medical Entrance Test conducted by the appellant-University was subject matter of consideration. The writ petitions were filed before this Court by some of the candidates raising a grievance that the key answers in respect of 21 questions were incorrect. The High Court appointed the Central Board of Secondary Education (CBSE) to examine the correctness of key answers. The report was submitted to the effect that 10 key answers out of 21 were incorrect. Thereafter, the High Court directed that key answers in respect of 200 questions deserves to be re-examined without cancelling the entire Entrance Test. It was ordered that the majority view of the Committee appointed by the High Court would be the basis of the revised/correct key answers. In an appeal, the Hon'ble Supreme Court sought report from the CBSE as well as from the Delhi University on the correctness of 10 key answers. The Court found that out of such questions, 8 questions are demonstrably erroneous, whereas in respect of 2 questions, benefit of doubt as per law well settled has to go in favour of the examining body. The Hon'ble Supreme Court directed that the key answers of such questions should be re-examined by the University in the light of the reports of the CBSE and the Delhi University.

8. The Court also found that 7 questions are so vague as that they are incapable of having a correct answer. The University has given credit to all the students, who had participated in the Entrance Test. Such course was not found to be proper. Having said so, the Court found that the reasonable procedure would be to give credit only to those, who attempted such questions or some of them. The University was directed to revise the result accordingly.

9. We do not find that the said judgment provides any assistance to the arguments raised. The action of the University in giving credit to all the students, whether they have attempted the questions or not, was found to be unjustified. In the present case, the examining body has taken a conscious decision that credit or discredit of such questions shall not be given to any student irrespective of the fact whether a student has attempted such questions or not. Therefore, all students have been assessed on the basis of 120 questions rather than on the basis of 125 questions. Numerous eventualities can be conceived as a result of such decision; such as, a candidate, who has answered the questions correct, has been deprived of the marks, whereas a candidate, who has not understood the questions correctly and not attempted the same or attempted wrongly, would stand to benefit.

10. In a writ petition, we are not to examine the numerable circumstances, which may ensue as a result of deletion of such questions. As a part of judicial review, the jurisdiction of this Court is to examine the decision making process. Whether the decision making process of deleting the questions is so arbitrary, unreasonable or irrational that it cannot be sustained. The examining body is the

most suitable to decide, whether such questions are vague or the options are incorrect or not possible. Such decision of the examining body has to be respected. The decision of the examining body that questions need to be deleted cannot be said to be arbitrary, unreasonable or irrational, which may warrant interference by this Court in exercise of its writ jurisdiction.

11. We find that the argument of learned counsel for the petitioner to be contradictory, when the petitioner seeks deletion of three questions i.e. 78, 83 & 125. Again, whether the question should be deleted or not depends upon the opinion of the examining body. The decision of the examining body to delete some questions or not to delete other questions cannot be said to be violative of any principle of natural justice or arbitrary or irrational, which may warrant interference in any manner."

In Monika Goyal's case (supra) also, this Court was dealing with the correctness of the answer key in regard to the preliminary examination held for the selection in the cadre of Punjab Civil Services (Judicial Branch). In the said case, question No.55 was challenged on the ground that it has wrongly been deleted. In this regard, the Court has recorded the following observations:-

"7B) Question No. 55

Which of the following statement is incorrect in the light of Transfer of Property Act, 1882?

- a. Right of Redemption belongs to mortgagor
- b. Right of Foreclosure belongs to mortgagor
- c. Right of Redemption can be abrogated by parties
- d. Right of Foreclosure cannot be abrogated by parties
- e. None of these

(Legal Position under Transfer of Property Act)

"60. Right of mortgagor to redeem. - At any time after the principal money has become [due], the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver [to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee] of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished: xxxxxxxxxxxx" "67. Right to foreclosure or sale. - In the absence of a contract to the contrary, the mortgagee has, at any time after the mortgage-money has become [due] to him, and before

a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court [a decree] that the mortgagor shall be absolutely debarred of his right to redeem the property, or [a decree] that the property be sold.
xxxxxxxxxxxxxxxxxxxxx"

Proposed Answer Key

B

Objections and Cross Objections:

Answer(s) suggested by Objector(s)/ C, D, delete the question Cross Objector(s)

Respondents' Reply -

Original answer key option was B. Answer key option was changed to E on consideration of objections and cross objections. No worthwhile reason is given in the synopsis against the deletion of the question. It is simply submitted that most appropriate answer option is B. Therefore, the candidates who attempted B ought to have been given marks. Further, there was no occasion to delete the question to disadvantage of the writ petitioners who selected the most appropriate answer. Answer option B is a right option as right of foreclosure belongs to mortgagee and not to mortgagor. Only a mortgagee can apply for fore close on expiry of mortgage period.

On further consideration of objections, answer options C and D were also found to be right answer options to the question. Right of redemption under Section 60 of Transfer of Property Act could not be abolished/abrogated by the parties as no contract to the contrary will be valid. Once a mortgage, is always mortgage. Right to redemption comes to an end only by the action of mortgagee when he secures orders for sale or foreclosure. Nevertheless the parties are debarred from entering into any agreement not to claim redemption which is a statutory right.

Section 67 of Transfer of Property Act clearly makes right to foreclosure subject to contract to the contrary between the parties which means they can by agreement abrogate the right of foreclosure.

In this way options B, C and D all are right options/ answers. Candidates have definitely been prejudiced in selecting right answer out of options B, C and D. Therefore, the Recruitment Committee was of the considered opinion that decision to delete this question (without awarding or deducting any marks) is justifiable and there is no need to change the same."

And ultimately the decision has been taken that there is no impropriety in deletion of the questions.

We have heard learned counsel for the parties in respect of the first question in detail and are of the considered opinion that the law has already been settled by

the Supreme Court in Ran Vijay Singh's case (supra) to the effect that "the entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse - exclude the suspect or offending question".

Similar is the view expressed by the Supreme Court in Richal's case (supra) wherein it has been held that "the questions having been deleted from the answers, the question paper has to be treated as containing the question less the deleted questions". In the said case, the matter was pertaining to the redistribution of marks of the deleted questions.

In Varun Chandiok's case (supra), this Court, while referring to the case of Guru Nanak Dev University's case (supra), has observed that "numerous eventualities can be conceived as a result of such decision; such as, a candidate, who has answered the questions correct, has been deprived of the marks, whereas a candidate, who has not understood the questions correctly and not attempted the same or attempted wrongly, would stand to benefit". It has been further held that "the examining body is the most suitable to decide, whether such questions are vague or the options are incorrect or not possible. Such decision of the examining body has to be respected. The decision of the examining body that questions need to be deleted cannot be said to be arbitrary, unreasonable or irrational, which may warrant interference by this Court in exercise of its writ jurisdiction".

In the present case also, we are of the considered opinion that the examining body has not acted arbitrarily or irrationally at the time of deleting the questions because it has been found that the deleted question carried more than one correct answer, whereas the examinees have to choose only one answer. The first question is, therefore, decided against the petitioners and in favour of the respondents.

At this stage, learned counsel for the petitioners have referred to a decision of the Delhi High Court rendered in the case of Anjali Goswami & Ors. vs. Registrar General, Delhi High Court, W.P.(C) No.963 of 2019, decided on 30.01.2019 to contend that in cases where more than one correct answer exists, the Court has ordered for awarding marks for choosing both the answers in the said case.

We have considered the judgment relied upon by the counsel for the petitioners but the judgment rendered by this Court in Varun Chandiok's case (supra) has to be followed in which it has been held that until and unless the decision is arbitrary, unreasonable or irrational, it would not warrant interference by this Court in exercise of its writ jurisdiction.

Now, we would advert to the argument of the petitioners about correctness of the decision of the respondents in deletion of certain questions. It may be

noticed that we have picked up the questions from Question Booklet Code 'A' and are referring to question Nos.35, 53, 100, 118, 56 and 61. The initial answers given to all the aforesaid questions were 'A', 'D', 'B', 'A', 'B' and 'E' respectively but at the time of re-consideration, on account of objections received from the petitioners and other candidates, it has been found that certain questions were carrying more than one correct answers, i.e. 'A' & 'E' in question No.35, 'B' & 'C' in question No.53, 'B' & 'E' in question No.100 and 'B' & 'D' in question No.118, whereas in question No.56, there was erroneous spelling of Option 'B' and in question No.61, all the options were found to be correct and, thus, the said question was deleted. The respondents have given justification in their reply about deletion of the aforesaid questions, which is reproduced as under:-

"A) Question No. 35

"35. Which of the following is not a decree?

- A. Dismissal in default.
- B. Rejection of a plaint
- C. Both (a) and (b)
- D. Neither (a) nor (b)
- E. Only (a)"

As per Section 2(2) of the Code of Civil Procedure, 1908 while rejection of a plaint is deemed to be a decree, a dismissal in default is specifically excluded from the definition of a 'Decree' as per Section 2(2) CPC. Thus, the above mentioned question had two credit options i.e. 'A' and 'E'. The contention of the Petitioners that correct should be given to the candidates who opted for either of two is correct is

incorrect for the reason that the examination carries negative marking and any candidate, while exercising reasonable diligence and finding more than one correct options, would avoid attempting such a question. Consequently, a number of candidates might not have attempted such questions and thus, in order to avoid any prejudice being caused to any candidate, a conscious decision was taken to DELETE this question. Hence, Question No. 35 was DELETED.

B) Question No. 53

"53. In case of specific performance of part of contract the purchaser

- A. May not relinquish claim to further performance of the remaining part of the contract and has no right to compensation
- B. May relinquish claim to further performance of the remaining part of the contract and has right to compensation

- C. Specific performance of part of contract not possible
- D. All the above
- E. None of the above"

Both options 'B' and 'C' were correct. Hence applying the reasoning given by the Answering Respondent in response to Question No. 35, as aforesaid, mutatis mutandis to the instant question, the same was DELETED.

C) Question No. 100

"100. Who among the following is not entitled to claim maintenance under Section 125 Cr. P.C.

- A. Divorced wife so long as she does not marry
- B. Unmarried sister
- C. Adoptive mother
- D. Illegitimate minor child
- E. Concubine"

Both options 'B' and 'E' were correct. Hence applying the reasoning given by the Answering Respondent in response to Question No. 35, as aforesaid, mutatis mutandis to the instant question, the same was DELETED. The judgment reported as AIR 1965 SC 1970 passed by a Constitution Bench of the Hon'ble Supreme Court of India is not applicable or material for determining the correct answer to the aforesaid question in view of the fact that the Hon'ble Apex Court, in the aforesaid case, was not determining or considering the entitlement of a concubine to seeking maintenance under Section 125 Cr. PC. The matter considered by the Hon'ble Apex Court was restricted and limited to the entitlement of a concubine and her children to seek maintenance in terms of the mandate of the Hindu Adoptions and Maintenance Act, 1956.

The Hon'ble Supreme Court of India, in its judgment rendered in Kamala v. M.R. Mohan Kumar, Criminal Appeal Nos. 2368 and 2369 of 2009 decided on 24.10.2018, while examining various judgments rendered by the Hon'ble Apex Court in the context of Section 125 Cr. PC, has observed that only such a woman who had cohabitated continuously with a man for a number of years, leading to a presumption in law to be drawn in favour of marriage and against concubinage, would be entitled to seek maintenance under Section 125 Cr. PC. In view of the aforesaid judgment, it is thus evident and clear that an unmarried sister as well as a concubine were not entitled to claim maintenance under Section 125 Cr. PC. Consequently, in view two correct answers to the aforesaid question, the same was DELETED.

D) Question No. 118

"118. A Muslim gift is

- A. Compulsorily registrable
- B. Not compulsorily registrable
- C. Optionally registrable
- D. Only the (b) and (c)
- E. Not necessary to register"

Options 'B', 'C' and 'E' were the correct answers. A Muslim gift is not compulsorily registrable and consequently, whether it is said that such a gift is optionally registrable or not necessary to be registered are one and the same thing. Therefore, on account of existence of more than one correct answer to the aforesaid question/incomplete phrase, the above mentioned question was DELETED while adopting the same yardstick as followed in respect of the Question Nos. 35, 53 and 100. The detailed reasoning given in response to Question No. 35 in the instant written statement may kindly be read as a part of the instant paragraph/question as well.

E) Question No. 56

"56. Law of contract creates

- A. Jus in rem
- B. Jus in peronum
- C. Ubi jus ibi remedium
- D. None of the above"

The law of contract creates a right (jus) in personam. Option 'B' was initially recommended by the Hon'ble Recruitment Committee as being the correct answer. However, objections regarding this question were received to the effect that the phrase 'jus in peronum' (sic 'for personum') is incorrect as the word 'personum' has been incorrectly written as 'peronum'; as there was option 'D' i.e. none of the above, which is indicative of the fact that the remaining answer/options in this question could be incorrect. The candidates are not supposed to interpolate or extrapolate in the options of their own. They are bound to consider the option as such. Thus, in view of the reasonable possibility of many candidates answering option 'D' instead of option 'B' in view of the mistake in the spelling of the word which had been written as 'peronum' in all the sets of question papers, the Hon'ble Recruitment Committee, in order to avoid any prejudice being caused to any of the candidates, DELETED this question.

R Question No. 61

"61. Match the following person in list-I with their achievements in List-II

List-I

List-II

a.

Rajkumari Amrit Kaur

i.

First woman Chief Minister

b.

Leila Seth

ii.

First woman High Court Judge

c.

Sucheta Kriplani

iii.

First woman Ambassador

d.

C.B. Muthamma

iv.

First woman Central Minister

A. a-iii; b-i; c-ii; d-iv

B. a-iv; b-ii; c-iii; d-i

C. a-iii; b-iv; c-i; d-ii

D. a-ii; b-iv; c-iii; d-i

E. a-iv; b-ii; c-i; d-iii

The aforesaid question was deleted as none of the options gave the correct answer. Justice Leila Seth was the First woman Chief Justice of any High Court in India and not the First woman High Court Judge in India. Justice Anna Chandy, in fact, was the First woman in India to become High Court Judge when she was elevated as a Judge of the Hon'ble Kerala High Court on 9.2.1959 and held office till 5.4.1967. Thus, as none of the options gave the correct answer, the aforesaid question was DELETED."

Learned counsel for the petitioners, while referring to question No.35, has submitted that although the respondents have alleged that there are two ('A' &

`E') correct answers but as per Section 2(2) of the Code of Civil Procedure, 1908, there are many other circumstances in which there would not be a decree.

In this regard, learned counsel for the respondents has submitted that the form of the question has to be read in order to find out the answer and the sine qua non was that the examinee has to find out only one correct option amongst the options given.

We are in agreement with the explanation given by the respondents that the Option `A'- "dismissed in default" is the right answer because a suit/case dismissed in default cannot be a decree and at the same time Option `E', which also says the Option `A', should not have been there. Therefore, because of this confusion, which has been crept in, the question itself has rightly been deleted by the respondents.

Insofar as question No.53 is concerned, the initial answer given by the respondents was Option `D', i.e. all the circumstances mentioned in Options `A', `B' and `C', but on reconsideration, it has been found that the Options `B' & `C' both are correct answers and in this regard, learned counsel for the respondents has drawn the attention of this Court to Section 12 of the Specific Relief Act, 1963 (hereinafter referred to as the "Act"), which reads as under:-

"12. Specific performance of part of contract.--(1) Except as otherwise hereinafter provided in this section the court shall not direct the specific performance of a part of a contract.

(2) Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed by only a small proportion to the whole in value and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

(3) Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either-

(a) forms a considerable part of the whole, though admitting of compensation in money; or

(b) does not admit of compensation in money; he is not entitled to obtain a decree for specific performance; but the court may, at the suit of other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party-

(i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and a case falling under clause (b), 2[pays or had paid] the consideration for the whole of the contract without any abatement; and

(ii) in either case, relinquished all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for

the loss or damage sustained by him through the default of the defendant.

(4) When apart of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the court may direct specific performance of the former part.

Explanation: For the purposes of this section, a party to a contract shall be deemed to be unable to perform the whole of his part of it if a portion of its subject matter existing at the date of the contract has ceased to exist at the time of its performance."

It is submitted that Section 12(1) of the Act deals with Option `B' and Section 12(2) of the Act deals with Option `C' but the knowledge of the entire Section 12 deals with the Option `A'.

We have considered the explanation given by the learned counsel for the respondents and have found it to be plausible, therefore, this question has also rightly been deleted by the respondents.

Insofar as question No.100 is concerned, the initial answer given was Option `B', i.e. unmarried sister, but the respondents have given explanation that since Options `B' & `E' both were correct, therefore, the said question was deleted. In this regard, reference could be had to the explanation of the respondents given in the reply, which has already been reproduced here-in-above. After going through the reply given by the respondents, we are of the considered opinion that there is no error in it.

Insofar as question No.118 is concerned, the initial answer given by the respondents was Option `A' but ultimately it has been found that there were more than two correct answers to this question, i.e. Options `B', `D' and `E'. Since there were three correct answers available in the given options, therefore, after thoroughly considering all the options, the respondents found that in view of the mistake having been committed by the examiner in giving three correct options for the said question, the irresistible conclusion taken was to delete the said question.

We do not find any error in this regard in the decision of the respondents.

Insofar as question No.56 is concerned, much arguments have been addressed by the learned counsel for the parties in this regard. The said question has been deleted because Option `B' was mentioned as "jus in peronum". Counsel for the respondents has given the reasoning that there is no phrase as "jus in peronum". It is submitted that the options given in this question are all of Latin words and since there is no such word given in Option-B "jus in peronum" and the last Option `D' "none of the above" was also there, therefore, they have to delete the entire question.

Counsel for the petitioners has referred to question No.62 and question No.79 of

Question Booklet Code `A', which reads as under:-

"62. _____ won the "first justice prize" from India who is also named as "Living Legend of Law" by the International Bar Association?

- A. Krishna Iyer, retired Judge, Supreme Court of India
- B. Fali S. Nariman, Senior Advocate
- C. Kapil Sibal, Senior Advocate
- D. None of the above

79. A child who doesn't understand or distinguish between the right and the wrong is called as doli incapax. This is defined under which section of the IPC, 1860.

- A. Sec. 86
- B. Sec. 87
- C. Sec. 84
- D. Sec. 83
- E. Sec. 82"

According to the petitioners, there is a confusion in both the questions as in question No.62, the examiner has set up the word "first justice prize", whereas there is no "first justice prize" rather it is the "justice prize". In this regard, learned counsel for the respondents has submitted that the question has to be read as a whole and not in parts because the examiner has set up the question to ask as to who has won the "first justice prize" from India who is also named as the "Living Legend of Law" by the International Bar Association. It is further submitted by the respondents that since there is only one Indian who has won the "justice prize", namely, Sh. Fali S. Nariman, Senior Advocate and, therefore, this question did not deserve deletion.

We are in agreement with the contention of the learned counsel for the respondents in this regard.

Counsel for the petitioners have referred to the decision of this Court rendered in Monika Goyal's case (supra) in which there was a typographical error in question No.27, which reads as under:-

"Question No.27

Which amongst the following ? immovable property as per Section 3 of Transfer of Property Act, 1882?

- a. Standing Timber
- b. Grass

- c. Fruit Trees
- d. Growing Crops
- e. None of these"

In regard to the aforesaid typographical error, the reply given by the respondents may be looked into and also the decision of this Court, which reads as under:-

"Respondents' Reply - Entire stress is given in the synopsis that answer C is correct. Even a judgment in *Shanta Bai Versus State of Bombay* AIR 1958 SC 532 is cited. It is submitted that deletion of the question was not appropriate. The issue is being considered by the writ petitioners not in the proper perspective. Some objectors who attempted question paper booklet code A pointed out that word 'can be' is missing between the word 'following' and 'immovable property' in question No.27 which was present in corresponding question in booklet Code B, C and D. Misprint word f at the given place did not convey any sense. It could mean anything. They insisted a prejudice is caused to them in selecting right answer option.

On checking of question booklets of all codes it was found that objections are correct. Due to omission, question 27 either made no sense or made a different sense to the candidate who attempted question booklet Code A vis-à-vis candidates who attempted question booklets code B, C and D. It is not out of place to mention here that a similar typographical mistake was reported during the examination in a question No.26 of Code B (86 of Code A) and it was ordered to be deleted to avoid any disadvantage to any candidate. On the same analogy, question No.27 has been deleted finding the objections as valid. On deletion of question, no marks have been awarded or deducted. Accordingly, the Recruitment Committee found to change the decision already taken.

Our decision -

It transpires that there was a printing mistake in this question only in the Booklet Code 'A', which has also been highlighted by us in Bold Font while reproducing the question earlier. Undoubtedly, the Question as printed in the concerned Booklet is Grammatically incorrect, although a common sense inference might be drawn that what was being asked is which of the given Answers could be described as 'Immovable Property' under Section 3 of the Transfer of Property Act. The Committee however chose to play safe and therefore deleted this question altogether on the premise that it could have prejudiced some of the candidates, who were provided with the Booklet Code 'A'. Admittedly, there was no printing mistake in relation to this question in Booklets 'B', 'C' and 'D'. It emerges that the question was deleted only after the examination had already been completed. Consequently, three quarters (3/4ths) of the candidates in whose booklets, where there was no mistake, surely stand to be prejudiced for deletion of this question after they had attempted it and presumably given the correct answer. Even in relation to the small typographical error in the question

where the letter 'f' has been printed in place of the words 'is' or 'can be', our view is that question was certainly capable of being understood by any average student of Law conversant with the relevant Section of the Transfer of Property Act. We therefore, are of the opinion that total deletion of this question was not justified. On the other hand, we can protect the interest of any affected candidates who were supplied with the question booklet 'A' by awarding full marks to those of them who had answered this question correctly by choosing the initial correct option of 'C' and not penalizing with negative marking in case of the candidates from this particular segment (supplied with booklet-A) who had chosen an incorrect option, to preclude any prejudice to anyone due to the visible printing error."

But there were four booklets `A', `B', `C' and `D' and the mistake/misprinting only occurred in booklet `A' and there was no mistake in booklets `B', `C' and `D'. Consequently, there were three quarters (3/4th) of the candidates whose booklets had no mistake with regard to that question, therefore, in case the said question is deleted, then it would prejudicially affect the interest of those candidates.

Thus, the reasoning given by the respondents in this regard is accepted because in this case, question No.56 is the same in all the four booklets.

Insofar as question No.79 is concerned, counsel for the petitioners have submitted that the word "dolyincapax" has been wrongly spelt because the actual spelling is "doli incapax", whereas in the said question, the word has been spelt as "dolyincapax".

In this regard, learned counsel for the respondents has submitted that change of an alphabet (i) in a latin word cannot change the whole complexion of that word, which can easily be understood by a student of law because the word "doli incapax" has a reference in regard to Section 82 of the IPC which can easily be understood.

We are totally in agreement with the contention of the learned counsel for the respondents in this regard.

Insofar as question No.61 is concerned, initially the answer was given as Option `E' but ultimately it has been found that all the options were incorrect because Justice Leila Seth was the first woman Chief Justice of any High Court in India and not the first woman High Court Judge in India and in fact Justice Anna Chandy was the first woman in India to become a High Court Judge when she was elevated as a Judge of the Kerala High Court. Thus, none of the options given in the question gave the correct answer and the respondents have rightly chosen to delete that question.

In view of the above, we do not find the action taken by the respondents of deletion of aforesaid questions to be arbitrary, unreasonable or irrational and, thus, we answer the first question accordingly.

The second question is in regard to the two questions which, according to the petitioners, were posed out of the syllabus. The said two questions are as under:-

"Question No.6:

It is mandatory that transfer of an actionable claim can be effected only by an instrument in writing but it does not have effect on

- (A) Negotiable instrument
- (B) Arrears of Rent
- (C) An amount due under a letter of credit
- (D) None of the above

Question No.83

The land of the beneficial enjoyment of which the easementary right exists is called

- (A) Profit-a-pendre
- (B) Servient heritage
- (C) Dominant heritage
- (D) Customery heritage"

Learned counsel for the petitioners have sought to argue that question No.6 has been set down by the examiner from the Transfer of Property Act, 1882 and question No.83 has been set down from the Indian Easement Act, 1882, which are not the part of syllabus. In this regard, they have relied upon para 12 of the advertisement to contend that it has been categorically mentioned that "the objective type multiple-choice questions for the Preliminary Examination shall be from the syllabus for the Main Examination". He has also referred to the syllabus of the main examination, which is reproduced here-as-under:-

"12. SYLLABUS FOR MAIN EXAMINATION:

The Main Examination shall consist of six papers, five written and viva voce.

The description of papers and the syllabus shall be as under:-

Paper-1

Code of Civil procedure, Punjab Courts Act,

200 Marks

Civil Law-1

Indian Contract Act, Indian partnership Act,

Sale of Goods Act, Specific Relief Act, Indian

Evidence Act and Haryana Urban (Control of Rent and Eviction) Act, 1973.

Paper-II-

Hindu Law, Mohammadan Law and Customary
200 Marks

Civil Law-II

Law, Law of Registration and Limitation.

Paper-III

Indian Penal Code, Criminal Procedure Code
200 Marks

Criminal Law

and Indian Evidence Act,

Paper-IV

The English paper will be of 200 marks and
200 Marks

English

consist of the following:-

1. English Essay (1000-1100 words)

100 Marks

2.

Precis

25 Marks

Words and Phrases (Make

3.

sentences of

25 Marks

the given words and Phrases)

4.

Comprehension

25 Marks

5.

Corrections

25 Marks

Paper-V

Hindi (in Devnagri Script)

100 Marks

Language

Paper-VI

To judge the personal qualities of the candidates.

200 Marks

Viva-

The viva-voce

shall relate to the matters of

Voce

general interest and is intended to test the

candidates' alertness, intelligence and general

outlook. it shall be conducted in English.

As per the aforesaid syllabus, there were only two papers of Civil Law, i.e. Paper-I and Paper-II and these two subjects, namely, the Transfer of Property Act, 1882 and the Indian Easement Act, 1882 are conspicuous by their absence in both the papers. The question, thus, arose as to whether the petitioners have been taken by surprise by the examiner by inserting these two questions in the question paper. Had the questions been inserted from some subjects other than law, then the matter would have been different but since the examinees are aspirants to become judicial officers, the said questions have been asked by the examiner generally to test their legal aptitude. In this regard, counsel for the respondents has referred to the following part of para 12 of the advertisement:-

"....The candidate shall be expected to have a general and basic over view of the main subjects and also the ability to answer questions on current events of national and international importance, Indian legal and constitutional history and governance. The candidate shall also be tested for his analytical skills, reasoning and aptitude. The standard of the question paper shall be of Law graduate level...."

We are sanguine of the fact that the petitioners, who are appearing in such a prestigious examination after completing their 5 or 3 years law degree, must

have read all these subjects during their studies and, therefore, these two questions were not put in regard to the provisions of law but were put generally to test as to whether the candidates actually have the knowledge of law beyond the syllabus. Thus, we do not find any error on the part of the respondents in asking these two questions from the candidates as the said questions are meant for testing the legal aptitude of the candidates who are aspiring to become judges and expected to have a general and basic overview of the various subjects of law and also the ability to answer questions on current events of national and international importance.

We answer the second question accordingly.

Insofar as the third question is concerned, counsel for the petitioners have submitted that the respondents have erred in revising the answer key of three question Nos.111, 18 and 38. They have submitted that earlier, the answer of these three questions was Options 'A', 'D' and 'C' respectively, which have been revised to Options 'B', 'A' and 'A' respectively.

Counsel for the petitioners have submitted that the revision of the answer key is totally wrong. In this regard, it is argued that in question No.111, Option 'A' was correct because the question was put "delay in filing the suit ____" and they have answered it as Option 'A' - "can be condoned under Order VII, Rule 6 C.P.C." and the same answer was initially taken to be correct by the respondents but later on, it has wrongly been changed to Option 'B' - "cannot be condoned". In this regard, the petitioners have referred to the answer key of the Himachal Pradesh Judicial Examination, in which the same question was there and the answer key was Option 'A'. They have also referred to a decision of this Court rendered in the case of Surinder Pal vs. Surinder Pal, RSA No.5878 of 2014, decided on 21.05.2015, to contend that though it is the duty of the Court to dismiss a claim as time-barred if it is brought beyond the period prescribed in the schedule; but limitation may be saved if the plaintiff can bring himself within one of the exceptions. In this regard, it would be relevant to refer to Section 3 of the Limitation Act, 1963, which reads as under:-

"3. Bar of limitation.-(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

(2) For the purposes of this Act,-

(a) a suit is instituted,-

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the

court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted-

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court."

A close look on the above provision provides that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence, which means that if there is any delay, it cannot be condoned but Order 7 Rule 6 of the CPC, to which reference has been made by the petitioners, reads as under:-

"Order 7 Rule 6. Grounds of exemption from limitation law.-Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff shall show the ground upon which exemption from such law is claimed.

Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint."

In this regard, counsel for the respondents has submitted that the question was plain and simple that what would happen in case the suit is filed with delay and according to the respondents, as per the Limitation Act, 1963, if the suit is instituted after the prescribed period, then the delay cannot be condoned. It is further submitted that had the language of the question been that where the delay in the institution of a suit after expiration of the limitation can be condoned by invoking exemption of any law, then perhaps the Option 'A' could have been taken into consideration.

We are in full agreement with the contention of the learned counsel for the respondents and, thus, the objection raised by the petitioners is hereby rejected.

Question Nos.18 and 38 and the reply given by the respondents in regard to those questions is reproduced here-as-under for ready reference:-

"Question No. 18

"18. Under Section 145 of Evidence Act, a witness may be contradicted as to previous statement in writing

A. without proving the same but only after showing the same to the witness.

B. after proving the same may be before showing the same to the witness

C. after proving the same & showing the same to the witness

D. without proving the same and without showing the same to the witness"

The correct answer is option 'A'. Section 145 Evidence Act, 1872 is unambiguously worded in so far as wherever a witness is sought to be contradicted with an earlier statement of the in writing, he is required to be shown those parts of his earlier statement in writing relevant for the purpose of contradicting him before the said writing can be proved. Thus, it is not necessary at that stage to prove the earlier statement in writing before showing the same to the witness. Consequently, where the aspect of proving the previous statement in writing was to be deliberated upon or done after showing the relevant portion of the earlier statement for the purpose of the confronting/contradicting a witness, the suggestion made by the Petitioner for declaring option 'D' as the correct answer is legally untenable and the correct answer is required to be maintained as option 'A'.

Question No. 38

"38. In criminal trials, the accused has to establish his plea for the mitigation or justification of an offence.

A. Substantially

B. Beyond reasonable doubt

C. Prima facie

D. None of these"

The correct answer is option 'A'. In various judgments rendered by the Hon'ble Apex Court, the phrase 'preponderance of probability' which is akin to 'substantially' has been used while observing and holding that the defence set up by an accused for mitigating or justifying an offence is required to be examined/ weighed on the touchstone of preponderance of probability in order to assist the Court to find merit in the reasons and circumstances might have justified the commission an offence by an accused. Such a plea is required to be supported by some cogent explanation persuading the Court to test the same on the avail of whether the prosecution has thereafter been able to prove the commission of an offence in a pre-planned manner with criminal intent, beyond all reasonable doubt. Thus, the plea/defence of the accused needs to be substantial in nature and thus option 'A' is the correct answer.

Insofar as question No.18 is concerned, it relates to Section 145 of the Indian Evidence Act, 1872. Initially, the answer given by the respondents was Option 'D' that a witness may be contradicted to his previous statement in writing without proving the same and without showing the same to the witness but after pondering over again and consideration of the objections received by the respondents, it was found that the correct answer is Option 'A'. In this regard, counsel for the petitioners have submitted that the words have been specifically

chosen by the legislature in regard to bringing to the notice of a witness about contradiction in his statement. Section 145 of the Evidence Act, 1872 is reproduced as under:-

"145. Cross-examination as to previous statements in writing.- A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

According to the petitioners, the first part of the said provision deals with the word "showing" and later part deals with the word "attention". In this regard, counsel for the respondents has submitted that merely the use of word "attention" would not mean that the document/statement, with which a witness is intended to be contradicted, cannot be shown to him.

The explanation given in the reply is not such which can be said to be demonstrably or palpably erroneous and since we do not find any substance in the arguments raised by the counsel for the petitioners, therefore, the objection raised by the petitioners in this regard is overruled.

Insofar as question No.38 is concerned, the petitioners have alleged that in criminal trials, the accused has to establish his plea for mitigation or justification of an offence prima facie, whereas the respondents have found that it cannot be prima facie but has to be substantial. In this regard, counsel for the petitioners have referred to Section 105 of the Evidence Act, 1872, whereas the counsel for the respondents has referred to a decision of the Supreme Court rendered in the case of Krishnan vs. State of Tamil Nadu, 2006(3) Crimes 257 and more particularly, referred to paragraph 9 of this judgment, which reads as under:-

"9. It is now well settled that the onus is on the accused to establish that his action was in exercise of the right of private defence. The plea can be established either by letting in defence evidence or from the prosecution evidence itself, but cannot be based on speculation or mere surmises. The accused need not take the plea explicitly. He can succeed in his plea if he is able to bring out from the evidence of the prosecution witnesses or other evidence that the apparent criminal act was committed by him in exercise of his right of private defence. He should make out circumstances that would have reasonably caused an apprehension in his mind that he would suffer death or grievous hurt if he does not exercise his right of private defence. There is a clear distinction between the nature of burden that is cast on an accused under section 105 of the Evidence Act (read with section 96 to 106 of Indian Penal Code) to establish a plea of private defence and the burden that is cast on the prosecution under section 101 of the Evidence Act to prove its case. The burden on the accused is not as onerous as that which lies on the prosecution. While the prosecution is required to prove its case beyond a reasonable doubt, the accused can discharge his onus

by establishing a preponderance of probability (vide *Partap vs. State of U.P.* (1976 (1) SCC 757); *Salim Zia vs. State of UP* (1979 (2) SCC 648); and *Mohinder Pal Jolly vs. State of Punjab* (1979 (3) SCC 30)).

In *Sekar vs. State* [2002 (8) SCC 354], this Court observed : A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. In order to find whether right of private defence is available or not, the injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered. Whether in a particular set of circumstances, a person acted in the exercise of the right of private defence, is a question of fact to be determined on the facts and circumstances of each case. No test in the abstract for determining such a question can be laid down. In determining this question of fact, the Court must consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such a plea. In a given case, the Court can consider it even if the accused has not taken it. If the same is available to be considered from the material on record.

(emphasis supplied).

The above legal position was reiterated in *Rizan v. State of Chhattisgarh* [2003 (2) SCC 661]. After an exhaustive reference to several decisions of this Court, this Court summarized the nature of plea of private defence required to be put forth and the degree of proof in support of it, thus :

"Under Section 105 of the Indian Evidence Act, 1872, the burden of proof is on the accused, who sets off the plea of self-defence, and, in the absence of proof, it is not possible for the court to presume the truth of the plea of self-defence. The court shall presume the absence of such circumstances. It is for the accused to place necessary material on record either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution. An accused taking the plea of the right of private defence is not required to call evidence; he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. The question in such a case would be a question of assessing the true effect of the prosecution evidence, and not a question of the accused discharging any burden. When the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused. The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material

on record. The accused need not prove the existence of the right of private defence beyond reasonable doubt. It is enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea."

In view of the above, we have found the explanation given by the respondents to be justified and, thus, this objection is also rejected.

Thus, the 3rd question is answered accordingly.

Insofar as the 4th question is concerned, various other questions have been brought to the notice of the Court about which they have claimed that the respondents should have either changed the answer key or deleted the said questions. The said questions are question Nos.40, 49, 62, 112, 114, 117, 27, 6, 9, 47 and 85. The respondents have given explanation regarding almost all the questions, which reads as under:-

G) Question No. 40

"40. In 2017, the Supreme Court held that right to privacy is protected under Article of 21 of the Constitution of India in the context of

A. State surveillance

B. Power of search and seizure

C. Homosexuality

D. Indian biometric identification Scheme"

The correct answer is 'D'. The form of question is self-explanatory in the sense that the candidates were required to answer in what context the Hon'ble Apex Court rendered its judgment in the year 2017 i.e. Justice K.S. Puttaswamy (Retd.) Vs. UOI and Others, AIR 2017 SC 4161 holding that the right to privacy was protected under Article 21 of the Constitution of India. For this purpose, reference is required to be made to the aforesaid judgment and the reason behind Constitution of a Nine Judge Bench of the Hon'ble Apex Court to determine whether Right to Privacy was also protected under Article 21 of the Constitution of India. The factually narration behind constitution of the Nine Judges Bench and the underlying reason for the same were extracted in the lead judgment rendered by Hon'ble Mr. Justice D.Y. Chandrachud, the relevant paragraphs under the Section 'Reference' are extracted hereunder:-

3. A Bench of three judges of this Court, while considering the constitutional challenge to the Aadhaar card scheme of the Union Government noted in its order dated 11 August 2015 that the norms for and compilation of demographic biometric data by Government was questioned on the ground that it violates the right to privacy. The Attorney General for India urged that the existence of a fundamental right of privacy is in doubt in view of two decisions: the first- M P Sharma v. Satish Chandra, District Magistrate, Delhi (1954) SCR 2017 ("M P Sharma") was rendered by a Bench of eight judges and the second, in Kharak

Singh v. State of Uttar Pradesh, (1964) 1 SCR 332 ("Kharak Singh") was rendered by a Bench of six judges. Each of these decisions, in the submission of the Attorney General, contained observations that the Indian Constitution does not specifically protect the right to privacy. On the other hand, the submission of the Petitioners was that M P Sharma and Kharak Singh were founded on principles expounded in A K Gopalan v. State of Madras, AIR 1950 SC 27 ("Gopalan"). Gopalan, which construed each provision contained in the Chapter on fundamental rights as embodying a distinct protection, was held not to be good law by an eleven-judge Bench in Rustom Cavasji Cooper v. Union of India, (1970) 1 SCC 248 ("Cooper"). Hence the Petitioners submitted that the basis of the two earlier decisions is not valid. Moreover, it was also urged that in the seven-judge Bench decision in Maneka Gandhi v. Union of India, (1978) 1 SCC 248 ("Maneka"), the minority judgment of Justice Subba Rao in Kharak Singh was specifically approved of and the decision of the majority was overruled.

4. While addressing these challenges, the Bench of three judges of this Court took note of several decisions of this Court in which the right to privacy has been held to be a constitutionally protected fundamental right. Those decisions include: Gobind v. State of Madhya Pradesh, (1975) 2 SCC 148 ('Gobind'), R Rajagopal v. State of Tamil Nadu, (1994) 6 SCC 632 ("Rajagopal") and People's Union for Civil Liberties v. Union of India, (1997) 1 SCC 301 ("PUPCL"). These subsequent decisions which affirmed the existence of a constitutionally protected right of privacy, were rendered by Benches of a strength smaller than those in M P Sharma and Kharak Singh. Faced with this predicament and having due regard to the far-reaching questions of importance involving interpretation of the Constitution, it was felt that institutional integrity and judicial discipline would require a reference to a larger Bench. Hence the Bench of three learned judges observed in its order dated 11 August 2015:

"12. We are of the opinion that the cases on hand raise far reaching questions of importance involving interpretation of the Constitution. What is at stake is the amplitude of the fundamental rights including that precious and inalienable right under Article 21. If the observations made in M.P. Sharma (supra) and Kharak Singh (supra) are to be read literally and accepted as the law of this country, the fundamental rights guaranteed under the Constitution of India and more particularly right to liberty under Article 21 would be denuded of vigour and vitality. At the same time, we are also of the opinion that the institutional integrity and judicial discipline require that pronouncement made by larger Benches of this Court cannot be ignored by the smaller Benches without appropriately explaining the reasons for not following the pronouncements made by such larger Benches. With due respect to all the learned Judges who rendered the subsequent judgments - where right to privacy is asserted or referred to their Lordships concern for the liberty of human beings, we are of the humble opinion that there appears to be certain amount of apparent unresolved contradiction in the law declared by this Court.

13. Therefore, in our opinion to give a quietus to the kind of controversy raised in this batch of cases once for all, it is better that the ratio decidendi of M.P. Sharma (supra) and Kharak Singh (supra) is scrutinized and the jurisprudential correctness of the subsequent decisions of this Court where the right to privacy is either asserted or referred be examined and authoritatively decided by a Bench of appropriate strength."

5. On 18 July 2017, a Constitution Bench presided over by the learned Chief Justice considered it appropriate that the issue be resolved by a Bench of nine judges. The order of the Constitution Bench reads thus:

"During the course of the hearing today, it seems that it has become essential for us to determine whether there is any fundamental right of privacy under the Indian Constitution. The determination of this question would essentially entail whether the decision recorded by this Court in M.P. Sharma and Ors. v. Satish Chandra, District Magistrate, Delhi and Ors. - 1950 SCR 1077 by an eight-Judge Constitution Bench, and also, in Kharak Singh v. The State of U.P. and Ors. - 1962 (1) SCR 332 by a six-Judge Constitution Bench, that there is no such fundamental right, is the correct expression of the constitutional position.

Before dealing with the matter any further, we are of the view that the issue noticed hereinabove deserves to be placed before the nine-Judge Constitution Bench. List these matters before the Nine-Judge Constitution Bench on 19.07.2017."

That further, Part-I of the judgment authored by Hon'ble Mr. Justice S.A. Bobde also refers to the Aadhaar project and makes reference to the biometric scheme introduced by the Government of India. Thus, the question being generic in nature, option 'D' was the correct answer in so far as the 2017 judgment of the Hon'ble Apex Court holding right to privacy as being protected under Article 21 of the Constitution of India was rendered in the context of rivaling questions/claims and counter claims in respect of the constitutional validity of the Biometric Identification Scheme introduced by the Government of India where the Hon'ble Apex Court was seized of an issue regarding constitutional validity of such a scheme and whether the same infringed the Fundamental Right of a Citizen of India under Article 21 of the Constitution of India. As the aforesaid judgement was rendered by the Hon'ble Apex Court in the context of the Indian Biometric Identification Scheme, thus option 'D' was the correct answer.

H) Question No. 49

"49. Under Section 6 of the Specific Relief Act, the suit can be brought

A. A servant

B. A Manager

C. A Tenancy by holding over

D. A trespasser"

Option 'C' is the correct answer. As per Section 6 of the Specific Relief Act, 1963 any person who is dispossessed without his consent from immovable property otherwise than in due course of law, may file a suit to recover possession thereof within a period of six months from the date of dispossession. Thus, for agitating a claim in respect of wrongful dispossession, the person ought to have been in possession of immovable property in the first place. A mere trespasser is not entitled to claim the remedy under Section 6 of the Specific Relief Act, 1963 and only a trespasser in settled possession of immovable property claim seek recourse to the aforesaid remedy. In view of the judgment passed by the Hon'ble Supreme Court in Rame Gowda (D) By Lrs v. M. Varadappa Naidu (D) By Lrs. & Anr, in Civil Appeal 7662 of 1997, only a trespasser in settled possession can file the suit under Section 6 of the Specific Relief Act, 1963. In option 'D', only the word trespasser has been used and not a trespasser in settled possession and consequently, a mere trespasser, in the absence of being in settled possession, could legally not institute a suit under Section 6 of the Specific Relief Act, 1963 as a result whereof, option 'D' is not the correct answer but, instead, the right option is 'C'.

I) Question No. 62

"62_____ won the "first justice prize" from India who is also named as "Living Legend of Law" by the International Bar Association?

A. Krishna Iyer, retired Judge Supreme Court of India

B. Fali S. Nariman, Senior Advocate

C. Kapil Sibal, Senior Advocate

D. None of the above Option 'B' is the correct answer. As a matter of fact, whereas Anthony Gubbay, former Chief Justice of the Supreme Court of Zimbabwe was the first recipient of the Justice Prize, the first Indian to win the Justice Prize was Mr. Fali S. Nariman, Senior Advocate and thus option 'B' is the correct answer.

J) Question No. 112

"112. Section 3 and Section 14 of Limitation Act are-

A. Both independent and not mutually exclusive

B. Mutually exclusive of each other

C. Neither independent nor mutually exclusive

D. Non of the above

E. Only mutually exclusive"

Option 'A' is the correct answer. The reliance placed by the Petitioner on a judgment rendered by Hon'ble Kerala High Court is misplaced as the said

judgment pertained to a correlation between Sections 5 and 14 of the Limitation Act, 1963 and not with regard to Sections 3 and 14 of the Act. Section 3 of the Limitation Act, 1963 mandates that every suit instituted, appeal preferred and application made after prescribed period of limitation shall be dismissed even if limitation has not been set up as a defence. Section 14 of the Limitation Act, 1963 provides for exclusion of the time spent in proceedings before a wrong forum from the period of limitation. Thus, Section 3 and 14 are independent where Section 14 has no applicability in the facts of the case and thus both are independent and operate in different fields. Yet, wherever an application under Section 14 of the Limitation Act, 1963 has been filed and warrants adjudication and wherever such an application is found to be meritorious, the time period spent by a litigant the proceedings before a wrong forum in a bonafide manner would have to be excluded from the period of limitation and the bar of limitation under Section 3 would thus be subject to the provisions contained in Section 14 of the Limitation Act, as a result whereof it cannot be said that Sections 3 and 14 of the Limitation Act, 1963 are both independent and not mutually exclusive, as a result whereof, option 'A' is the correct answer to the aforesaid question.

K) Question No. 114

"114. Limitation period prescribed in filing a suit by a mortgagor to recover possession of immovable property mortgaged.

- A. 20 years
- B. 12 years
- C. 10 years
- E. 30 years

Option 'D' is the correct answer. Article 61(a) of the Limitation Act, 1963 prescribes a period of Limitation of 30 years for filing a suit by a mortgagor to redeem or recover possession of mortgaged immovable property. Article 61(b) prescribes a period of Limitation of 12 years for filing a suit by a mortgagor to recover possession of immovable property mortgage and afterwards transferred by the mortgagee for valuable consideration. In the absence of the aforesaid phrase having been mentioned in the question, Article 61 (a) of the Limitation Act, 1963 determined the correct answer i.e. 30 years and any reference made to Article 61(b) is misplaced.

Article 61 of the Schedule appended to the Act *ibid* indicates that it covers three different situations in Clause 'a' to 'c'. Clause 'a' pertains to suit by the mortgagor to redeem or recover possession of immovable property mortgaged, which is 30 years. Clause 'b' refers to the suit by mortgagor to recover possession of immovable property mortgaged and after word 'transferred' by mortgaged for a valuable consideration, which is 12 years. Clause 'c' pertains to the suit for recovery of surplus calculation received by the mortgagee after the mortgage has been satisfied and the period prescribed is 3 years. Needless to

mention here that the termination a-quo (starting point of limitation) as well as prescribed period of limitation is different in all the three suits. It is self evident that the question pertains to Article 61(a) and not to the remaining two categories stipulated in Clause 'b' and 'c'. Thus, option 'D' is the correct answer.

N) Question No. 27

"27. What is the effect of opinion of the experts upon the Court?

- A. Binding on the judge
- B. Only advisory in nature
- C. The judge can form an opinion contrary to that of expert
- D. Both (b) and (c)
- E. None of the above"

Option 'D' is the correct answer. The opinion of experts is, admittedly, advisory in nature and it is open to a Judge to form an opinion contrary to that of an expert. In this view of the matter, both options 'B' and 'C' were correct and consequently, option 'D' was the correct answer also on account of the fact that the Option 'D' gives the most correct and appropriate answer whether question asked in the examination. Once both the option were correct and the question was not whether one options was better worded than the other, the submission of the Petitioner that option 'B' was the correct answer, is liable to be rejected.

Q Question No. 6

"6. A non-testamentary document is one

- A. Which is intended to take effect or be operative immediately on its execution
- B. Which is final
- C. Which is irrevocable
- D. All the above
- E Which is revocable"

The correct answer is option 'D'. A non-testamentary document means any document except a Will. For such a document, it is imperative that it should not only be final and irrevocable but should also be intended to take effect or become operative immediately on its execution. Thus, a document like a sale deed not only becomes operative immediately on its execution but is also final and irrevocable. Thus for a non-testamentary document to acquire recognition in law, it needs to possess a final and irrevocable character and thus, option 'D', out of all the options, was the most appropriate answer.

In respect of question No.40, counsel for the petitioners have submitted that the respondents have wrongly given the answer as Option `D', whereas it should

have been Option 'A'. According to them, there is nothing like "Indian Biometric Identification Scheme". In this regard, counsel for the petitioners have referred to "The Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016, whereas counsel for the respondents has referred to a decision of the Supreme Court rendered in the case of Justice K.S.Puttaswamy (Retd.) vs. UOI and others, AIR 2017 SC 4161. Counsel for the respondents has referred to the observations of Justice D.Y.Chandrachud in which he was referring to the norms for and compilation of demographic biometric data by the Government while there was constitutional challenge to the Aadhaar card scheme of the Union Government in regard to the norms for and compilation of demographic biometric data, which was questioned on the ground that it violates the right to privacy. She has also referred to the view of Justice S.A.Bobde to contend that the dispute before the Court was in regard to the Aadhaar project much-less to the biometric scheme introduced by the Government of India. Further, learned counsel for the respondents has submitted that the examinee has to read the question carefully before attempting the same. In the said question, it has been specifically asked that in what context, the Supreme Court, in 2017, held that right to privacy is protected under Article 21 of the Constitution of India. She has laid much emphasis on the words "in 2017" and "in the context of". According to her, there was no judgment delivered by the Supreme Court in the year 2017 in regard to Article 21 of the Constitution of India and the only judgment which was delivered by the Supreme Court in 2017 is in regard to "Indian Biometric Identification Scheme", which is commonly called as "Aadhaar".

In view of the above, we are one with the contention raised by the counsel for the respondents and, thus, the objection raised by the petitioners in this regard is rejected.

Insofar as question No.49 is concerned, the answer given by the respondent is Option 'C', whereas the petitioners have claimed that it should have been Options 'C' and 'D' both. The argument of the petitioners is that Option 'D' is correct as a trespasser can also file a suit under Section 6 of the Specific Relief Act, 1963. Learned counsel for the respondents has submitted that a trespasser in settled possession alone can file a suit against a true owner. In this regard, she has relied upon a decision of the Supreme Court rendered in the case of Rame Gowda (D) by LRs v. M. Varadappa Naidu (D) by LRs & anr., Civil Appeal No.7662 of 1997, in which it has been held that a trespasser in settled possession can file the suit under Section 6 of the Specific Relief Act, 1963. It is further submitted that the examiner wanted to test the knowledge of the examinees else he would have definitely mentioned in one of the answers to the question, a trespasser in settled possession. Since it has been categorically mentioned "a trespasser", therefore, the answer cannot be "a trespasser" and it should have been "a trespasser in settled possession" because a trespasser, may be for a short period, cannot file a suit under Section 6 of the Act of 1963. In view thereof, the answer given by the respondents is found to be correct.

Insofar as question No.62 is concerned, the answer given by the respondents is Option `B', whereas according to the petitioners, it should have been Option `D'. Their whole argument is that the question is confusing because the words "first justice prize" have been incorporated in the question, whereas it should have been "justice prize".

We do not agree with the contention raised by the petitioners because if the question is read as a whole, then it comes out to be "won the first justice prize from India" who is also named as "Living Legend of Law" by the International Bar Association and it is very easily understandable that the first justice prize winner from India is Fali S. Nariman, Senior Advocate, who is also named as "Living Legend of Law" by the International Bar Association.

Thus, the contention raised by the petitioners in this regard is repelled.

Insofar as question No.112 is concerned, counsel for the petitioners have submitted that the answer given by the respondents, i.e. Option `A', is wrong because they have alleged that it should have been Option `D' because Section 3 and Section 14 of the Limitation Act are not mutually exclusive as both are not against each other.

Counsel for the respondents has explained that Section 3 of the Limitation Act, 1963 would provide that the suit, if filed beyond the period prescribed, shall have to be dismissed, whereas Section 14 of the Act provides the exclusion of time period of limitation for any suit for which the plaintiff has been prosecuting with due diligence before a wrong forum. Thus, as per Section 14 of the Act, the aforesaid period can be excluded for the purpose of bringing the suit within the period of limitation. Thus, Sections 3 and 14 are independent where Section 14 has no applicability in the facts of the case and, thus, both are independent and operate in different fields. However, where an application under Section 14 of the Limitation Act, 1963 has been filed and warrants adjudication and wherever such an application is found to be meritorious, the time period spent by a litigant in proceedings before a wrong forum in a bona fide manner would have to be excluded from the period of limitation and the bar of limitation under Section 3 would thus be subject to the provisions contained in Section 14 of the Limitation Act.

Thus, the objection raised by the petitioners in this regard is hereby rejected.

Insofar as question No.114 is concerned, it has not been pressed by the petitioners and, therefore, it is not delved into by this Court.

Insofar as question No.27 is concerned, the answer given by the respondents is Option `D', whereas according to the petitioners, it should have been Option `B'. The question was as to what is the effect of opinion of the experts upon the Court and in this regard, Option `D' says both `B' and `C', i.e. "only advisory in nature" and "the judge can form an opinion contrary to that of expert". The explanation given by the respondents is that admittedly, an opinion of the expert

is only advisory in nature and the judge can form an opinion other than that of the expert, whereas the explanation given by the petitioners is that the question is "what is the effect of the opinion of the expert" would carry one answer and Option `B' is the right answer and not Options `B' and `C' both.

We are not satisfied with the explanation given by the petitioners because the effect of opinion of the experts upon the Court is only advisory in nature as the judge can also form an opinion contrary to that of the expert, therefore, the answer Option `D' is found to be more appropriate and hence, the objection raised by the petitioners in this regard is also rejected.

Insofar as Question No.6 is concerned, it pertains to a non-testamentary document. The answer given by the respondents is Option `D' which says "all the above", whereas according to the petitioners, it should have been Option `A' only. However, a testamentary document is a Will while all other documents are non-testamentary in nature. For example, a document like a sale deed not only becomes operative immediately on its execution but is also final and irrevocable until and unless it is challenged before the Court of law by way of a suit for declaration on the ground of fraud and misrepresentation.

Thus, the explanation given by the respondents in respect of their answer seems to be correct and hence, the objection raised by the respondents is hereby rejected.

Now, we would deal with questions Nos.9, 47 and 85, which read as under:-

"9. A is arrested by police and accused of murder of B. During investigation A voluntarily agrees to undergo narco analysis and therein he confesses to have murder B.

A. The confession is relevant and can be sole basis of conviction.

B. The confession is irrelevant.

C. The confession is relevant but requires corroboration.

D. Only that much of A's statement can be used as leads to discovery of a fact.

E. None of the above.

47. Which of the following statements are true regarding a decree of declaration?

I. It creates no new rights.

II. It cannot be prayed as a matter of right.

III. If all the parties are not joined, declaration cannot be granted.

IV. Such a decree is conclusive between the parties to it and persons litigation through them.

A. I, II, III and IV

B. I, III, IV

C. I, II, III

D. I and II.

85. Who has no right to partition under Hindu Law?

A. Mother

B. Son, grandson, great grandson

C. Son conceived at the time of partition

D. None of the above."

Insofar as question No.9 is concerned, it pertains to the voluntary confession of an accused who had undergone narco-analysis. According to the respondents, Option 'D' is the right answer, whereas according to the petitioners, it is Option 'B'.

Counsel for the respondents has referred to a judgment of the Supreme Court rendered in the case of Smt. Selvi & Ors. Vs. State of Karnataka & Ors., 2010(7) SCC 263. She has also referred to paragraph 223 of the said judgment in which it has been held that at the time of hearing, the person in question should also be told in clear terms that the statement that is made shall not be a "confessional" statement to the Magistrate but will have the status of a statement made to the police. She has also referred to Section 27 of the Indian Evidence Act, 1872 to contend that the voluntary confession during the course of investigation is a disclosure statement, which alone is relevant in case it leads to any discovery.

In this regard, learned counsel for the petitioners has submitted that the question is not pertaining to discovery of facts but it pertains to the confession.

The argument raised by the petitioners to support their contention that the answer should be Option 'B' cannot be taken to be correct because the ultimate effect is to be seen of a voluntary confession of an accused while undergoing narco- analysis test because the said statement would lead to discovery of a fact.

Thus, the objection raised by the petitioners with regard to this question is also rejected.

Insofar as question No.47 is concerned, the respondents have given the answer as Option 'A' which includes all the four answers, whereas according to the petitioners, it should have been Option 'B', i.e. all the options but for answer II that a decree of declaration cannot be prayed as a matter of right.

Counsel for the respondents has sought to argue that the relief of declaration cannot be prayed as a matter of right and in this regard, she has submitted that if the suit, which is per se fraudulent, in that case, the person has no right to

seek declaration. For example, if a person knows that the State is universally known as owner of a particular property, then any suit for declaration of ownership of that property cannot be entertained and has to be rejected at the threshold.

Thus, we are one with the explanation given by the respondents in regard to this question and hence, the objection raised by the petitioner is hereby rejected.

Last but not the least, question No.85 pertains to a person who has no right to partition under Hindu Law. The answer given by the respondents before revision was Option 'A', which was maintained as such in the final revised answer key as well that a mother has no right to partition under Hindu Law.

Counsel for the petitioners have referred to Section 10 of the Hindu Succession Act, 1956 and submitted that mother is the legal heir who would succeed to the property of her son and once she would succeed to the property, then she would also have a right to partition, whereas counsel for the respondents has submitted that the examinee has not read the question carefully as it does not talk of the Hindu Succession Act, 1956 but only about the Hindu Law. Section 4 of the Hindu Succession Act, 1956 has an overriding effect upon any text, rule or interpretation or Hindu Law or any custom or usage as part of that law in force immediately before the commencement of the Act with respect to any matter for which provision is made in the Act of 1956. Section 4 of the Act of 1956 is reproduced as under:-

"4. Over-riding effect of Act.- (1) Save as otherwise expressly provided in this Act,-

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act."

It is submitted that as per the Hindu Succession Act, 1956, all matters of customary law which were in force immediately before the commencement of the Act of 1956 would cease to have effect with respect to a matter for which provisions have been made in the Act of 1956. So, insofar as the partition of an immovable property amongst the Hindus is concerned, it is not made part of the Hindu Succession Act, 1956 and in this regard, counsel for the respondents has referred to Chapter XVI of Mulla Hindu Law and more particularly, paras 305, 315 and 352, which state that a mother, under Dayabhaga Law as also under Mitakshara Law, cannot herself demand a partition but if a partition takes place between her sons, she is entitled to a share equal to that of a son.

We are in full agreement with the explanation given by the respondents in regard to this question and hence, the objection raised by the petitioners is rejected.

Insofar as question No.117 is concerned, the same along with reply given by the respondents in regard thereto is reproduced hereunder for ready reference:-

"M) Question No. 117

"117. The Muslim Women (Protection of Rights on marriages)

Ordinance 2018 provides for:-

- I. It declares instant triple talaq talaq illegal and criminalizes it.
- II. It makes declarations of talaq a non bailable offence.
- III. A husband declaring talaq can be imprisoned for up to two years along with a fine.
- IV. It entitles Muslim women against whom triple talaq has been declared to seek subsistence allowance from her husband for herself and for her dependent children.

A. I and IV

B. I, III and IV

C. I, II and IV

D. All of the above"

As per Section 4 of the Ordinance, any Muslim husband, who declares Triple Talaq referred to in Section 3 upon his wife shall be punished within imprisonment for a term which may extend to three years and shall also be liable to fine. Further, as per Section 7 (a), the offence shall be cognizable, if the information of the offences given by the married Muslim women upon whom Talaq is pronounced or any person related to her by marriage and as per Section 7(b) the offence shall be compoundable at the instance of married Muslim women upon whom Talaq is pronounced with permission of the Magistrate. Further, as per Section 7(c), no person accused of an offence punishable under this Ordinance shall be released on bail unless the Magistrate, on an application filed by the accused and after hearing the married Muslim women upon whom Talaq is pronounced, is satisfied that there are reasonable grounds for granting to bail such person.

The Ordinance does not prescribe if the offence is bailable or non-bailable. However, plain reading of Section 7 (c) read with Section 4 of the Ordinance goes to show that the offence is bailable, but the accused shall not be released on bail unless an application is filed by the accused and opportunity of being heard is afforded to the aggrieved Muslim women and the Magistrate is satisfied that there exist reasonable grounds for granting bail. The maximum sentence prescribed under Section 4 of the Ordinance is term of imprisonment which may extend to three years and fine also. As the Ordinance does not specifically prescribe that the offence shall be bailable or non-bailable, hence, the provisions

of the General Law i.e. Part II of the First Schedule appended with the Code of Criminal Procedure shall apply, which provides that if the offence is punishable with imprisonment for three years and upwards but not more than 7 years it shall be non-bailable and if punishable within imprisonment for less than three years or with a fine only, it shall be a bailable.

Therefore, it cannot be said that declaration of Talaq under the Ordinance is a non-bailable offence as has been claimed by the Petitioner. Therefore, Option 'A' is the correct answer.

In this question, the answer given by the respondents is Option 'A', i.e. the Muslim Women (Protection of Rights on Marriages) Ordinance, 2018 provides for declaration of instant triple talaq illegal and criminalizes it and it entitles Muslim women against whom triple talaq has been declared to seek subsistence allowance from her husband for herself and for her dependent children. Whereas, according to the petitioners, the answer to this question should have been Option 'C' that includes the answer II as well that makes declaration of talaq a non-bailable offence.

In this regard, counsel for the petitioners have referred to Section 7 of the Muslim Women (Protection of Rights on Marriage) Ordinance, 2018, which reads as under:-

"7. Offence to be Cognizable Compoundable etc. Notwithstanding anything contained in the Code of Criminal Procedure, 1973,-

(a) an offence punishable under this Act shall be cognizable, if information relating to the commission of the offence is given to an officer in charge of a police station by the married Muslim woman upon whom talaq is pronounced or any person related to her by blood or marriage;

(b) an offence punishable under this Act shall be compoundable, at the instance of the married Muslim woman upon whom talaq is pronounced with the permission of the Magistrate, on such terms and conditions as he may determine;

(c) no person accused of an offence punishable under this Act shall be released on bail unless the Magistrate, on an application filed by the accused and after hearing the married Muslim woman upon whom talaq is pronounced, is satisfied that there are reasonable grounds for granting bail to such person."

It is apparent that there is a mistake committed by the respondents as Section 7 of the Ordinance categorically provides that the Magistrate can reject the bail application if he is satisfied that there are reasonable grounds for doing so. If that is so, then the offence becomes non-bailable. Even otherwise, for a bailable offence, the Magistrate does not have the power to consider any grounds for the purpose of grant or rejection of bail.

Counsel for the respondents has also referred to various other judgment of the Supreme Court rendered in the cases of U.P.P.S.C., Through its Chairman & Anr.

vs. Rahul Singh & Anr., 2018(3) S.C.T. 298, Ran Vijay Singh's case (supra), H.P. Public Service Commission vs. Mukesh Thakur & Anr., 2010(6) SCC 759, Kanpur University and others vs. Samir Gupta and others, 1983(4) SCC 309 and a judgment of the Kerala High Court rendered in the case of H. Nowfal vs. Kerala Public Service Commission, 2014(22) S.C.T. 662 to contend that no challenge is allowed to be made about the correctness of the answer key until and unless it is demonstrably and palpably erroneous.

There is no dispute about this proposition of law that the answer key can only be interfered with when the Court finds that it is demonstrably and palpably erroneous. Out of the aforesaid so many questions, we could only find the answer key of this question No.117 to be demonstrably and palpably erroneous because the answer runs contrary to the Ordinance itself. We do not accept the explanation which is sought to be given by the learned Senior Counsel appearing on behalf of the respondents that in Bill No.247 of 2017, i.e. The Muslim Women (Protection of Rights on Marriage) Bill, 2017, introduced in the Parliament, which has ultimately turned out to be an Ordinance, Section 7 specifically recorded that notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under this Act shall be cognizable and non-bailable within the meaning of the said Code. However, the aforesaid Bill was not passed by the Parliament and eventually the Ordinance dated 19.09.2018 was notified wherein a change had been made in Section 7 and the phrase "non-bailable" was deleted.

The submission of the counsel for the respondents is not correct as the Bill has nothing to do with the Ordinance because it is only the Ordinance which has the force of law, in which bail cannot be claimed as a matter of right until and unless the Court satisfies itself about the facts and circumstances for the purpose of its grant or rejection.

Thus, the contentions raised by the learned counsel for the respondents in regard to this question is hereby rejected and Option 'C' is held to be the correct answer to aforesaid question No.117.

In view of the aforesaid detailed discussion, all the writ petitions are hereby disposed of accordingly with a direction to the respondents to award marks to the remaining candidates who have attempted question No.117 (question number may be different in other three booklets) rightly by choosing Option 'C' and revise the result of all the remaining candidates accordingly within a period of one week from today and in case the candidates secure more than the cut off marks in their respective category(ies) after revision of result, such candidates shall be allowed to file their examination paper for their appearance in the main written examination de hors the fact that the respondents have invited only 10 times candidates against the available vacancies.

We further make it clear that pursuant to these directions, those candidates who have already been declared qualified to appear at the main examination, shall not be affected and only those additional candidates who reach the score of the

last qualified candidate in the original result as a consequence of such re-marking shall be treated as qualified to so appear at the main examination. This benefit of being declared qualified after such re-marking shall be applicable to all candidates irrespective of whether or not they had approached the court for not having been declared qualified in the original result.

Before parting, we would refer to the decision of the Supreme Court rendered in the case of Manish Ujwal and others vs. Maharishi Dayanand Saraswati University and others, 2005(6) SLR 451, in which there was a dispute about the answer key and the Supreme Court has made the following observations:-

"9. The High Court has committed a serious illegality in coming to the conclusion that "it cannot be said with certainty that answers to six questions given in the key answers were erroneous and incorrect". As already noticed, the key answers are palpably and demonstrably erroneous. In that view of the matter, the student community, whether the appellants or interveners or even those who did not approach the High Court or this Court, cannot be made to suffer on account of errors committed by the University. For the present, we say no more because there is nothing on record as to how this error crept up in giving the erroneous key answers and who was negligent. At the same time, however, it is necessary to note that the University and those who prepare the key answers have to be very careful and abundant caution is necessary in these matters for more than one reasons. We mention few of those; first and paramount reason being the welfare of the student and a wrong key answer can result in the merit being made a casualty. One can well understand the predicament of a young student at the threshold of his or her career if despite giving correct answer, the student suffers as a result of wrong and demonstrably erroneous key answer; the second reason is that the courts are slow in interfering in education matters which, in turn, casts a higher responsibility on the University while preparing the key answers; and thirdly, in cases of doubt, benefit goes in favour of the University and not in favour of the students. If this attitude of casual approach in providing key answer is adopted by concerned persons, directions may have to be issued for taking appropriate action, including the disciplinary action, against those responsible for wrong and demonstrably erroneous key answers but we refrain from issuing such directions in the present case."

Thus, we issue only a piece of advice to the respondents to be very careful in future with regard to framing of questions and finalizing the answer key(s) whenever any competitive examination is to be held by them.