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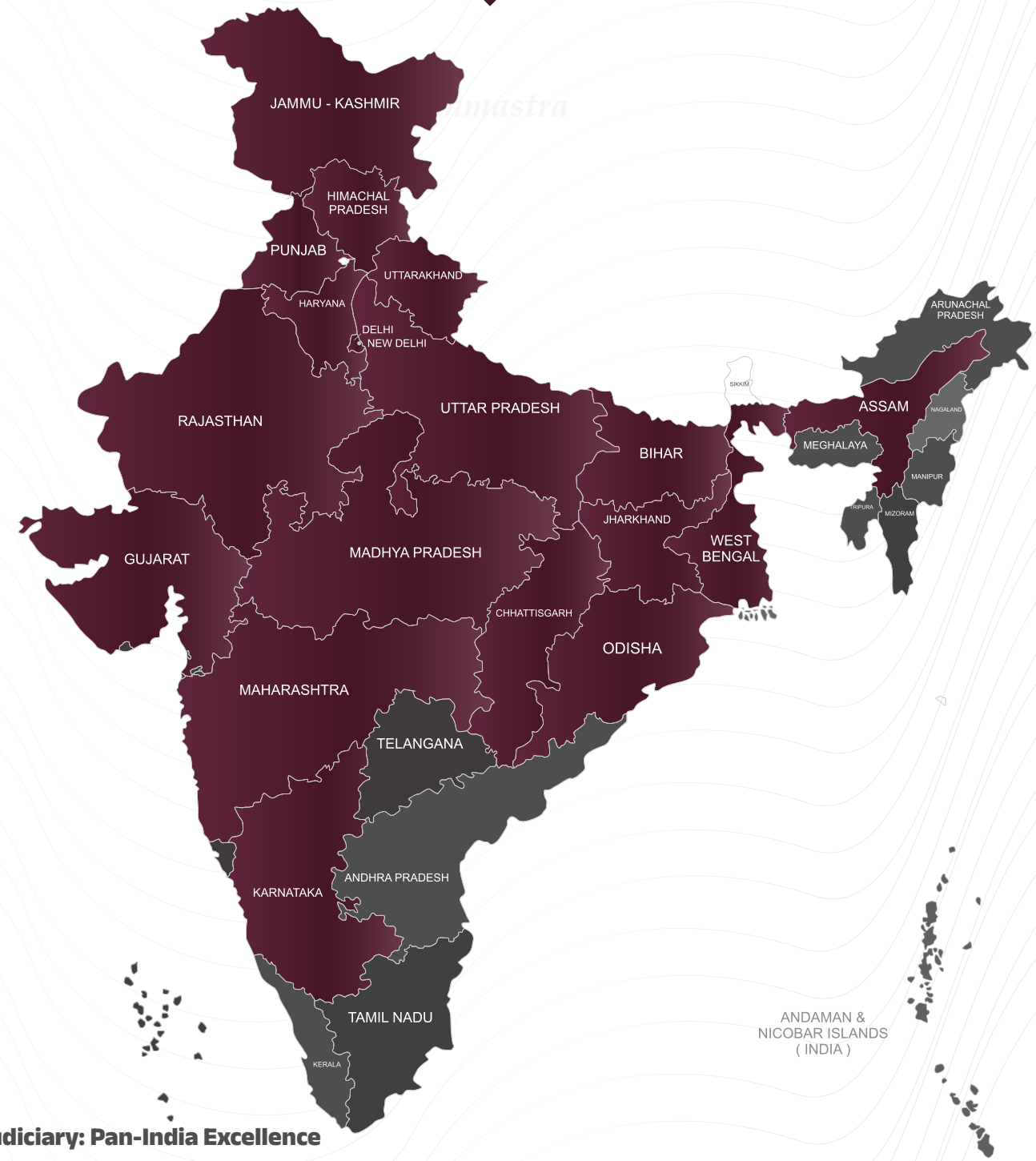
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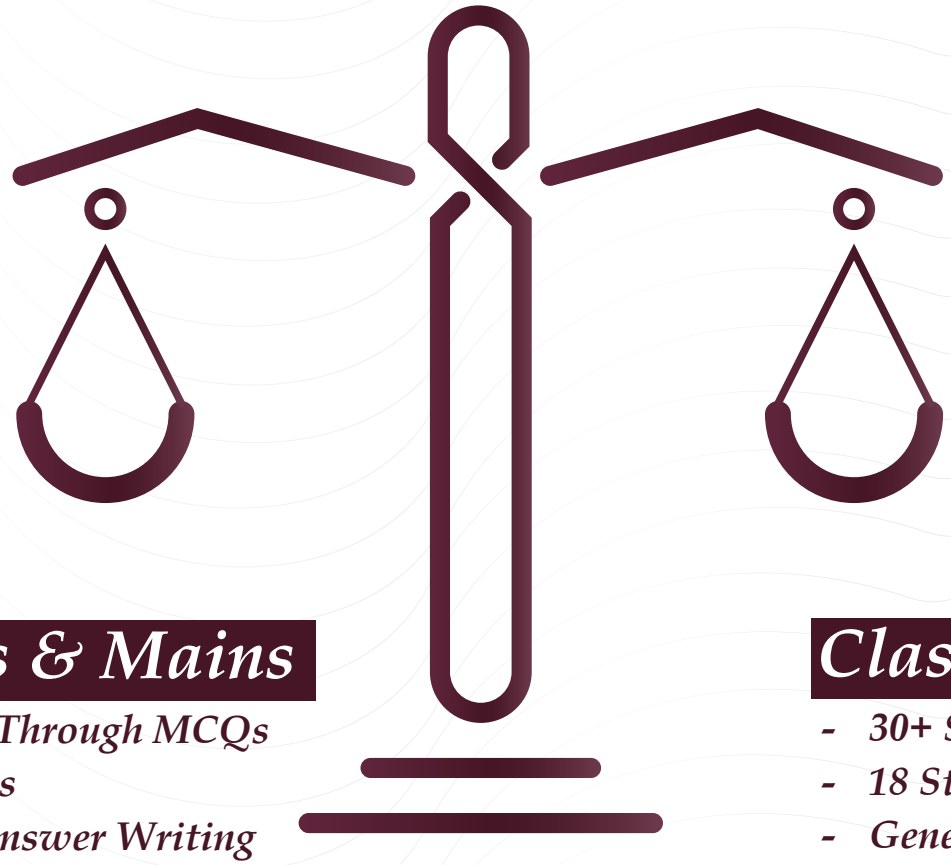
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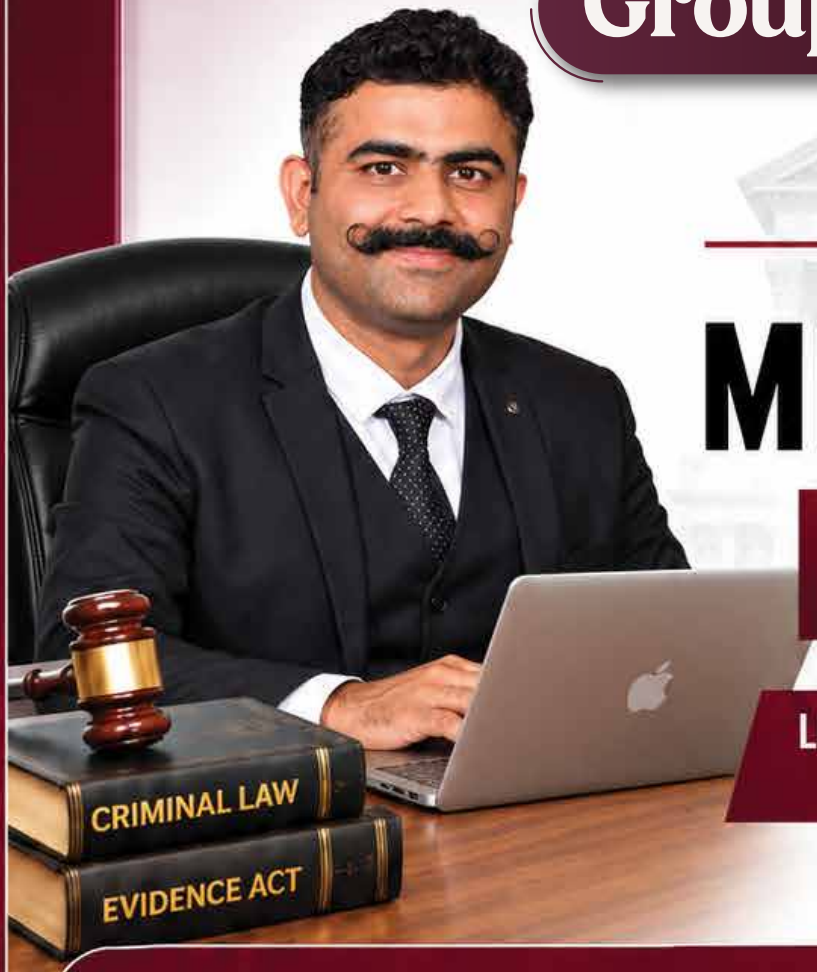
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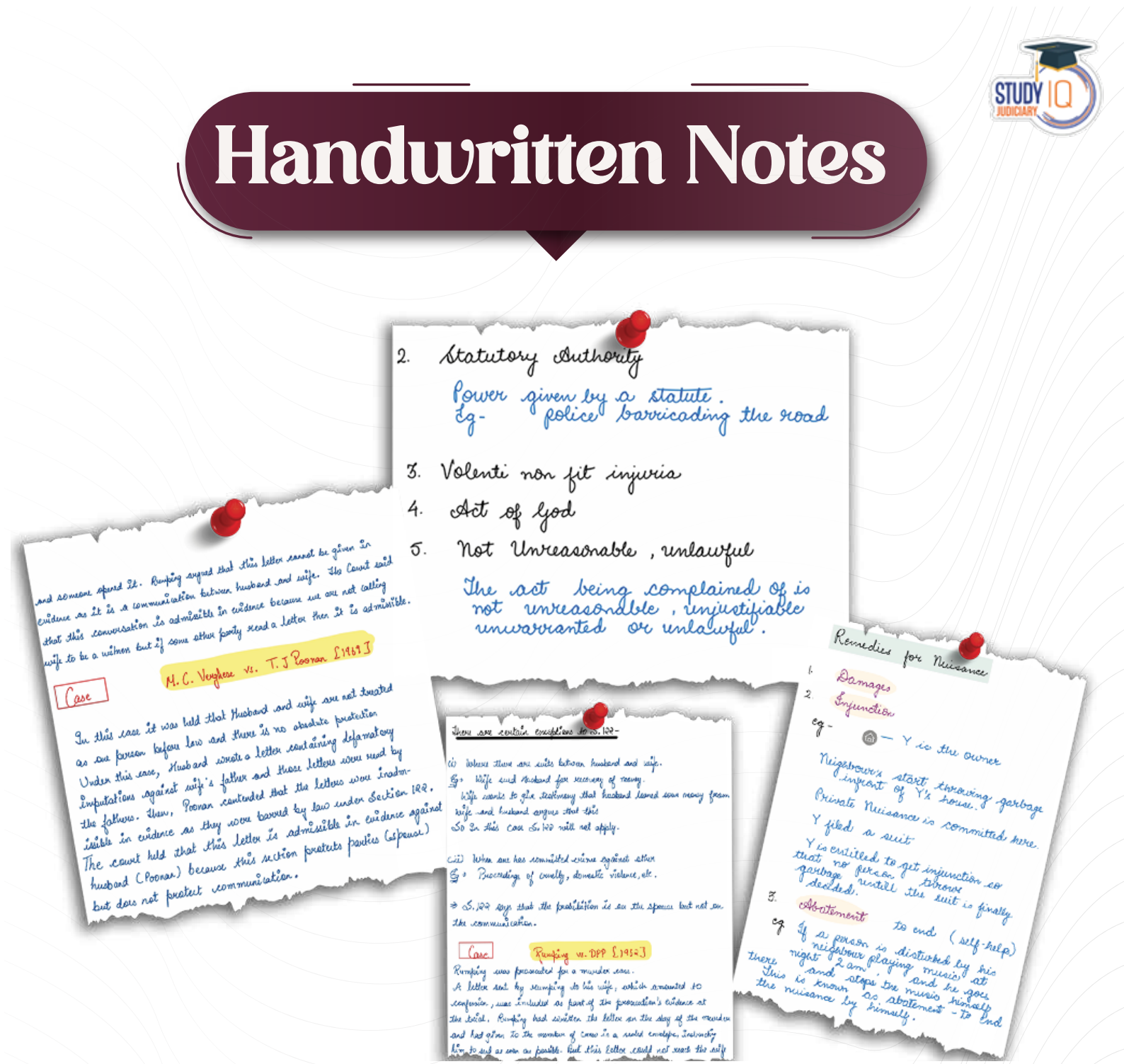
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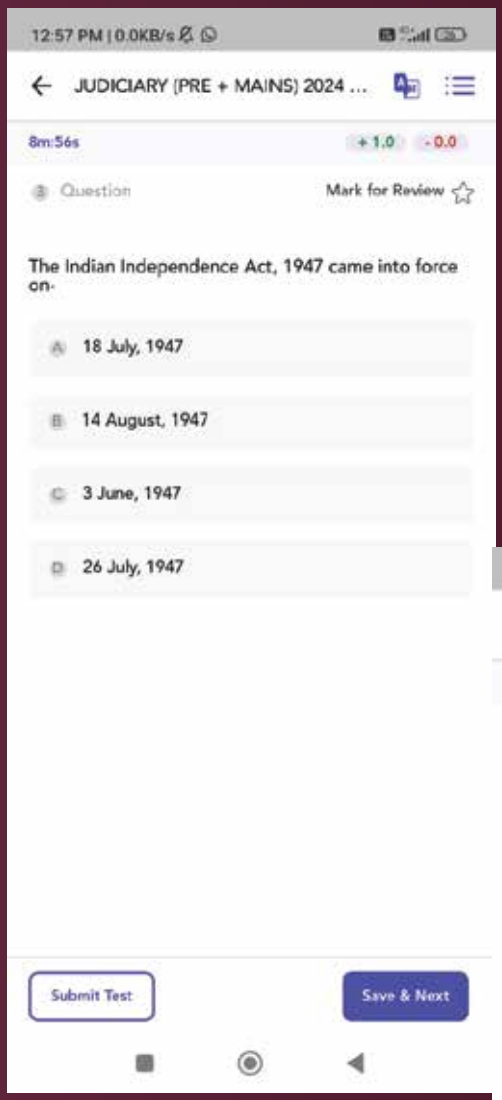
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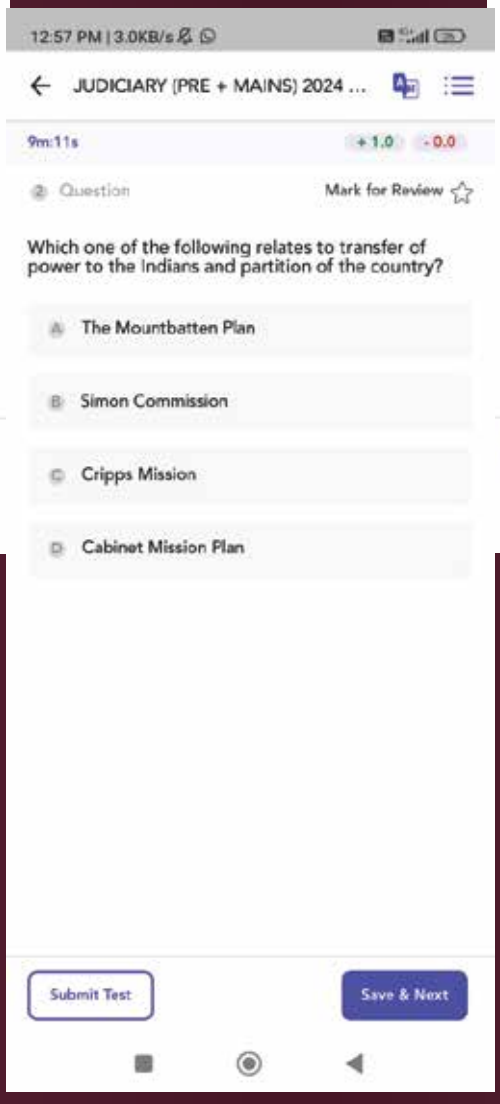
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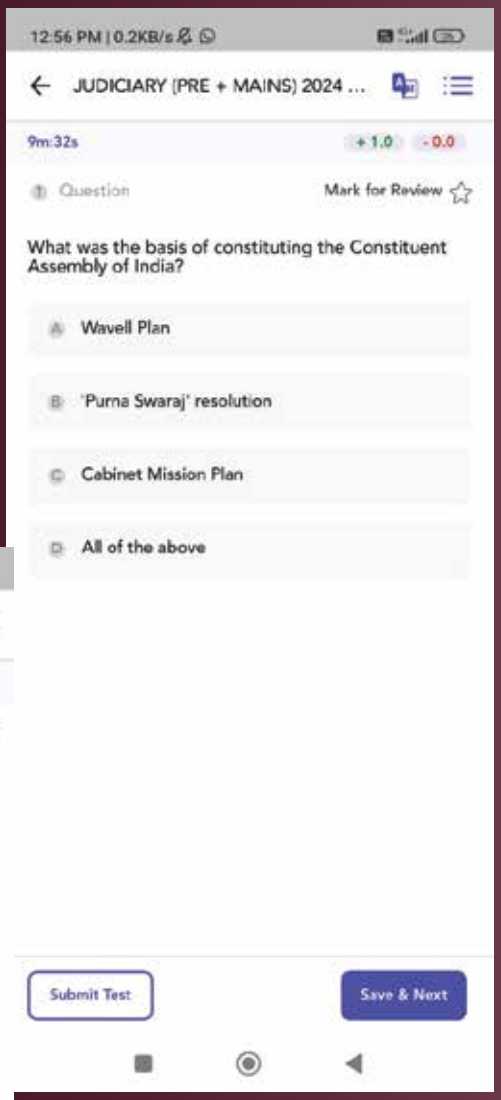
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MCQs for Practice







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CHAPTER 1
INTRODUCTION OF TRANSFER OF PROPERTY ACT

BACKGROUND

The traditional legislation governing property transfer was entirely based on custom. Prior to the arrival of the British and their active involvement in the Indian legal system, Hindus and Muslims were regulated by their respective laws of property transfer. This structure functioned effectively within the informal and conventional judicial framework of panchayats, as the adjudicators were well-acquainted with both the nature of the dispute and the relevant legal principles, as well as the parties involved. Nonetheless, the identical situation became exceedingly complicated and ambiguous with the introduction of informal courts in India by the British. In this adversarial legal framework, the conflicts were adjudicated by unbiased judges who lacked familiarity with the plaintiffs and the unique social structure of India. Recognising the lack of a definitive and ascertainable property law like that of England, these courts implemented English property transfer procedures with adaptations to accommodate Indian circumstances. Nonetheless, the application of British ideals, even with changes, was often extremely unsuitable due to the social and cultural disparities between England and India. The necessity of implementing property transfer legislation became evident shortly after the establishment of British rule in India. Moreover, several high courts, in the lack of explicit regulations, extensively employed their interpretations of equity, justice, and good conscience, establishing fundamentally contradictory concepts that increased confusion and uncertainty. The Privy Council expressed worry about this ambiguity and assigned the unfavourable situation to the absence of codification of property law in India, urging authorities to take immediate action in this regard.

Relationship between Arbitration Law and the Civil Procedure Code

- Although the Arbitration and Conciliation Act of 1996 refers to arbitration matters before civil courts, the Civil Procedure Code applies in these cases, contrary to the popular assumption that the Arbitration Law is a complete and independent law. The Arbitration Tribunal shall not be bound by the Indian Evidence Act or the Civil Procedure Code 1908 (hereafter the Code 1908), according to Section 19 of the Act 1996.
- However, Section 19 of the Act is exempted under the Civil Procedure Code. According to Section 19(2) of the Act, if the Arbitration Tribunal refuses to deliver the award despite the applicant pays the costs it has requested, the court may, upon application, order that the arbitral tribunal deliver the award to the applicant, provided the applicant pays the costs into court. The court may then conduct whatever inquiry it deems appropriate. The court may further mandate that a reasonable amount of fees be given to the arbitral tribunal from the funds that were paid into the court and that the remaining funds be used for arbitral proceedings.
- In India, unless requested by a party and only in cases where the Act 1996 specifies limited grounds for challenge, the courts do not consider the merits of an arbitration ruling.
- As per section 89(1) of the Code of 1908, cases must be encouraged to be submitted for alternative dispute resolution. The Code has a number of schedules that require the court to facilitate a settlement between the parties.
- The courts are required by the First Schedule, Order XXXII A, Rule 3 to try their utmost to help the parties reach a resolution over the suit's subject matter in the first place.
- A key clause intended to encourage the use of alternative dispute resolution (ADR) procedures, including arbitration, conciliation, mediation, and judicial settlement, is

CHAPTER V
OF OFFENCES AGAINST WOMAN AND CHILD Of sexual offences

IMPORTANT INTERLINKINGS AND RELEVANT PROVISIONS/CONCEPTS IN THE CRIMINAL LAWS GROUP FOR PRACTICAL AND COMPLETE UNDERSTANDING OF THIS CHAPTER -

1. Presumption As to absence of consent in certain prosecution for rape – section 120 of BSA 2023-

Section 120 of BSA provides as under in a prosecution for rape under subsection two of section 64 of BNS, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raised and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent. In this section, sexual intercourse shall mean any of the acts mentioned in section 63 of the BNS.

2. Evidence of character or previous sexual experience not relevant in certain cases.

Section 48 of BSA provides that in prosecution for an offence under section 64, 65, 66, 67, 68, 69, 70, 71, 74, 75, 76, 77 or section 78 of the BNS or for attempt to commit any such offence, –

i) where the question of consent is an issue,

ii) evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.

3. Punishment for repeat offence under section 64 or section 65 or section 66 or section 70 – section 71 of BNS.

Repeat offender – whoever has been previously convicted of an offence punishable under section 64,65, 66, 70 and is subsequently convicted of an offence punishable under any of the said sections; Previous offender shall be punished with imprisonment for life, which shall be imprisonment for the remainder of that person's natural life or with death.

4. Disclosure of identity of victim of certain offences, etc, section 72 and 73.

5. Section 21 of BNSS provides that any offence under section 64, 65, 66, 67, 68, 69, 70 or 71 of the BNS shall be tried as far as practicable by a court presided over by a woman by virtue of Section 21 (a) of BNSS.

THE BHARATIYA SAKSHYA ADHINIYAM, 2023

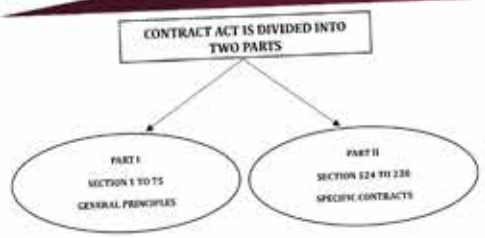
INTRODUCTION

- The Bharatiya Sakshya Adhiniyam, 2023 marks a pivotal moment in the evolution of Indian legal jurisprudence, replacing the century-old Indian Evidence Act, 1872. This new legislation is crafted to align with the demands of a modern legal system, incorporating advancements in technology and reflecting contemporary societal values. The act introduces significant reforms in the rules of evidence, aiming to ensure that the judicial process remains robust, fair, and adaptable to the complexities of the 21st century. By updating definitions, streamlining the admissibility of evidence, and providing special protections for vulnerable witnesses, the Bharatiya Sakshya Adhiniyam, 2023, establishes a more dynamic and responsive framework for the administration of justice in India.
- Important Dates:
  a) Introduced in the Lok Sabha on August 11, 2023.
  b) Received Presidential assent on December 25, 2023
  c) Came into force on July 1, 2024.

The Bharatiya Sakshya Adhiniyam, 2023 (BSA), enacted to replace the Indian Evidence Act of 1872 (IEA), received approval from the Lok Sabha on December 20, 2023, and from the Rajya Sabha on December 21, 2023. It was subsequently signed into law by the President on December 25, 2023. While the BSA retains many of the provisions from the IEA, these have been updated and modernized. Additionally, the BSA introduces new elements aimed at facilitating judicial processes and enhancing transparency within the legal system. The legislation involves modifications to 24 sections, the repeal of 6 sections, the addition of 2 new sections and 6 new sub-sections, resulting in the creation of the BSA, 2023.

The Bharatiya Sakshya Adhiniyam, 2023 (BSA) is a comprehensive legislative framework that includes 170 sections distributed across 12 chapters and 4 parts. In contrast, the Indian Evidence Act, 1872, comprises 167 sections organised into 11 chapters and 3 parts. The Indian Evidence Act was originally drafted by Sir James Stephen, while the Bharatiya Sakshya Adhiniyam, 2023 was developed by a committee led by Chairperson Ranbir Singh.

THE FOLLOWING PROVISIONS FROM IEA HAVE BEEN DELETED FROM BSA -



LEGAL GLOSSARY:

Offer *- the act or an instance of presenting something for acceptance; specifically, a statement that one is willing to do something for another person, or to give that person something.*

Conditional offer *- an offer made on the stipulation that it will only take effect once some contingent prerequisite has been satisfied; an offer that comes into effect only upon the occurrence of some specified event.*

Irrevocable offer *- an offer includes a promise to keep it open for a specified period, during which the offer cannot be withdrawn, without the offeror's becoming subject to liability for breach of contract.*

Mains Practical Questions

ARBITRATION AND CONCILIATION ACT

WEEKLY QUESTION AND ANSWER FOR MAINS EXAMINATION

Question: Discuss the appointment and role of arbitrators under the Arbitration and Conciliation Act, 1996. Discuss the grounds under which the appointment of an arbitrator may be challenged.

Answer

India's laws pertaining to domestic arbitration, international commercial arbitration, and the enforcement of foreign arbitral awards are all consolidated and amended under the Arbitration and Conciliation Act, 1996 (henceforth referred to as "the Act"). The Act's Part I addresses both domestic and international commercial arbitration with an Indian seat and is largely modelled after the UNCITRAL Model Law.

A crucial aspect of arbitration is the appointment, composition, and impartiality of the arbitral tribunal, which ensures the fairness, efficiency, and legitimacy of arbitral proceedings. Sections 10 to 15 of the Act govern these aspects.

I. Arbitral Tribunal Composition

1. Number of Arbitrators (Section 10)

The number of arbitrators may be chosen by the parties, as long as it is not an even number, according to Section 10. If such a decision is not made, there will only be one arbitrator on the arbitral tribunal.

However, the Supreme Court made it clear in **M.M.T.C. Ltd. v. Sterlite Industries (India) Ltd. (1996) 6 SCC 716** that an arbitration agreement that names an even number of arbitrators cannot be deemed void for that reason alone. The Court noted that the number of arbitrators is not a necessary requirement for the validity of an arbitration agreement as defined in Section 7. The arbitrators may choose a Presiding Arbitrator to break deadlocks if the parties choose an even number of arbitrators.

As a result, party autonomy is maintained while guaranteeing the tribunal's impartiality and functionality.

II. Appointment of Arbitrators

1. Freedom of Parties and Procedure (Section 11(1) & (2))

Unless the parties agree otherwise, Section 11(1) allows an arbitrator of any nationality to serve. Subject to Section 11(6), the parties are entirely free to choose the process for selecting arbitrators.

The default rule is applicable in cases where no method is agreed upon:

through illegal means necessitates evidence of overt actions. Judicial rulings emphasize that confidentiality and circumstantial inference are crucial in establishing conspiracy. Consequently, BNS upholds the existing structure of IPC while maintaining conspiracy as a grave offence against public peace and order.

Question: Discuss points of distinction between Kidnapping and Abduction.

Answer

The offences of kidnapping and abduction are addressed in the Bharatiya Nyaya Sanhita, 2023 (BNS) in Sections 137 and 138, respectively. Both constitute violations of individual liberty, aimed at safeguarding children and vulnerable persons, and ensuring the protection of persons from unlawful removal from lawful guardianship or forceful movement. Although they may seem analogous in common perception, the two offences are fundamentally different in their components, characteristics, and extent. Kidnapping constitutes a substantive offence independently, whereas abduction qualifies as an offence solely when executed with a particular criminal motive.

Kidnapping

Section 137 of the BNS delineates kidnapping into two classifications:

Kidnapping from India - conveying a person beyond the territorial limits of India without consent of such person or their lawful guardian [Section 137(1)(a)].

Kidnapping from lawful guardianship- taking or enticing away a child (below 18 years) or a person of unsound mind out of the keeping of a lawful guardian without the guardian's consent [Section 137(1)(b)].

Essential Characteristics of Kidnapping:

- It may be perpetrated against a child or a person of unsound mind.
- The consent of the child or minor is immaterial; what matters is the absence of a lawful guardian's consent.
- The offence is completed the moment the minor or unsound person is removed from the lawful guardianship or conveyed beyond India.
- It is a strict liability offence, meaning the intention of the accused is irrelevant.
- Section 137(2) stipulates a penalty of imprisonment for a term not exceeding seven years and a fine.

Judicial Precedent:

In **Vardarajan v. State of Madras, AIR 1962 SC 942**, a distinction was made between merely permitting a child to accompany someone and 'taking' the child out of lawful supervision.

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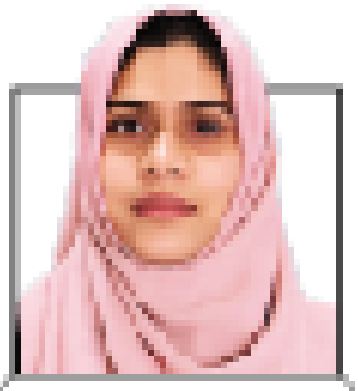
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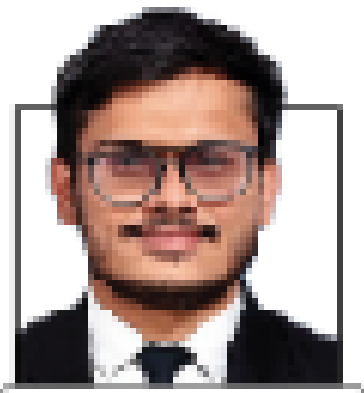
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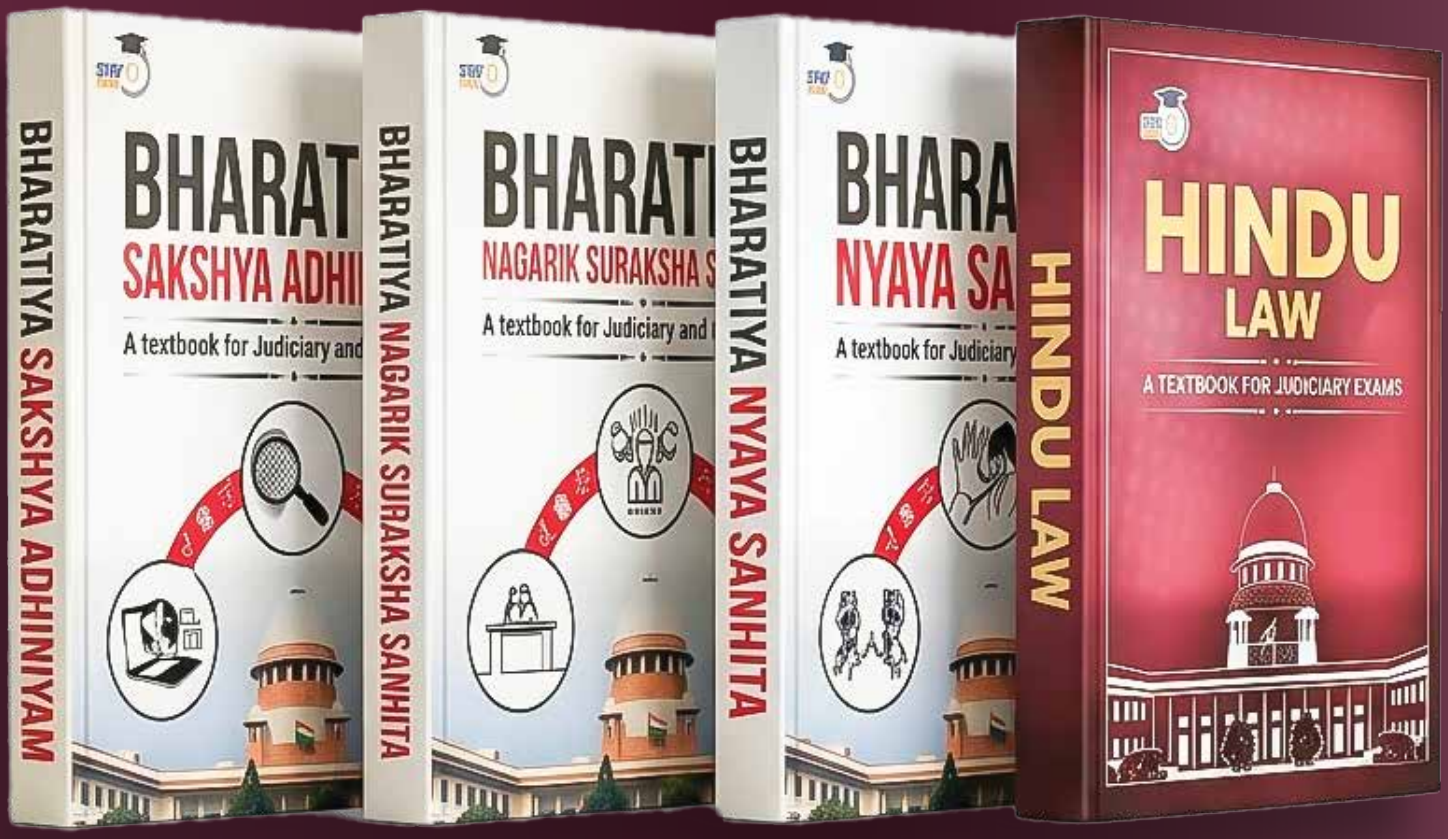
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