

TARGET PRELIMS 2024

BOOKLET-47; POLITY-1

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2. FUNDAMENTAL RIGHTS

1) EWS RESERVATION

- The **103rd Constitutional (Amendment) act** amended the constitution to provide economic backwardness as a ground for reservation.
 - » **Article 15(6)** has been added which empowers the state to make any special provision for advancement of EWS and to provide reservation to EWS for admissions to education institutions (other than minority educational institutions mentioned in Article 30(1))
 - » **Article 16(6)** empowers the state to provide reservation to people from EWS in government jobs.
 - » Both these kinds of reservation are capped at 10% and can't be claimed by people who are getting reservation benefits under other clauses of Article 15 and Article 16.

A) SUPREME COURT VERDICT: JANHIT ABHIYAN V. UNION OF INDIA, 2022

- **Background:** In Aug 2020, a batch of petitions challenging the 103rd Constitutional Amendment Act was referred to a **five judge Constitutional Bench**.
 - » The SC has agreed that the case involved at least **three substantial questions of law**:
 - i. Economic criteria alone can't be the basis to determine backwardness.
 - ii. The EWS quota exceeds the ceiling cap of 50% set by the Court.
 - iii. The Rights of unaided private institutions (to run their trade freely)
- In Nov 2022 A Constitutional Bench of the Supreme Court, in a 3:2 majority decision, upheld the Constitutional Validity of EWS Reservation:
 - » **Ques: Whether reservation on the sole basis of economic criteria violated basic structure of the Constitution?**
 - **The three judges (Justice Maheshwari, Justice Bela Trivedi, Justice Pardiwala) in majority** held that the "legislature didn't violate the Basic Structure of the Constitution".
 - Justice Maheshwari took an expansive view that reservation was an "instrument of affirmative action by the state" and shouldn't be confined to SCs, STs, SEBCs, but also include "any class or sections so disadvantaged as to answer the description of 'weaker section'"
 - Justice Bela Trivedi in her separate but concurring opinion upheld the amendment based on presumption that "the legislature understands and appreciates the needs of its own people".
 - » **Ques: Does 10% EWS quota breach the ceiling of 50% on reservation**
 - **The Majority verdict held** that the 50% formed by the Supreme Court in the Indira Sawhney judgment in 1992 was "not inflexible". Further, it applied only to SC/ST/SEBC/OBC communities and not to general category.
 - » **Ques: Can private (unaided) colleges be forced to have EWS quota?**
 - Only Justice Maheshwari's opinion, part of the majority view, engaged with this issue to some extent. It said "Unaided private institutions, including those imparting

professional education, cannot be seen as standing out of the national mainstream. Thus, reservations as a concept cannot be ruled out in private institutions where education is imparted"

- Judges have unanimously agreed to this.

B) SUPREME COURT DISMISSES REVIEW PETITION (MAY 2023)

- The Supreme Court dismissed the review petitions filed against its judgement upholding the validity of 103rd Constitutional Amendment that introduces 10% reservation for the EWS.
 - The SC held "Having perused the review petitions, there is no error apparent on the face of the record. No case for review under Order XLVII Rule 1 of the Supreme Court Rules 2013. The review petitions are, therefore, dismissed".

2) RIGHT TO FREEDOM OF SPEECH AND CRIMINAL DEFAMATION

- **Why in news?**
 - » Supreme Court stays Rahul Gandhi's conviction in 'Modi surname' remark criminal defamation case (Aug 2023)
 - Earlier in July 2023, the Gujarat High Court dismissed Rahul Gandhi's plea against his conviction in defamation case. In March 2023, a Surat magistrate court sentenced Congress leader Rahul Gandhi to two years' simple imprisonment for criminal defamation, in a case filed by BJP leader Purnesh Modi.
 - The case relates to Mr. Gandhi's remark while campaigning for the 2019 Lok Sabha poll in Karnataka. The High Court upheld the Surat Session Court's ruling in which Mr. Gandhi's plea seeking a stay on his conviction was rejected.
- **In India, defamation falls under both civil and criminal offence.**
 - » **Civil Defamation** is covered under the Law of Torts where a person who is defamed can move to the court and seek compensation.
 - » **Criminal Defamation** is covered by Sections 499 and 500 of IPC.
 - Section 499 criminalizes speech that is intended to mar the reputation of any person.
Section 500 details the punishment for defamation, making a person liable for imprisonment up to two years (with or without a fine).
- **Supreme Court in Subramaniam Swamy vs Union of India, 2016 upheld the constitutional validity of the penal law on defamation (Section 499 and 500 of IPC)**
 - » The court did not agree with the contentions that criminalizing defamation attacks freedom of speech and expression guaranteed under Article 19 (1) of the constitution.
 - » It said that the Freedom of Speech and Expression is not absolute and **Reputation of one can't be allowed to be crucified at the altar of the other's right of free speech**'.
 - » The court also said "**a free press is the heart and soul of political intercourse and is a public educator, but this freedom is not absolute and cannot be used by the media to cause injury to an individual's precious reputation**".
 - » The court also held that criminal defamation law protected the feeling of **fraternity** - or solidarity - between members of society.

- But various legal experts find a number of problems with the law
 1. **The defamation provisions stifle Freedom of Speech and Expression** in many ways **by powerful and strong** (especially that of weaker section and press)
 2. **Misused by government/large corporations/ Politicians to stifle** any kind of opposition and criticism by journalists and critics.
 3. **Other countries have abolished/weakened it.**
 - USA, Canada and South Africa have weakened the criminal defamation and UK has completely abolished the law to give more protection to freedom of speech and expression.

A) RAHUL GANDHI CASE: SUPREME COURT STAYS RAHUL GANDHI'S CONVICTION IN 'MODI SURNAME' REMARK HE ALLEGEDLY MADE DURING A POLITICAL RALLY IN 2019.

- The Apex Court pointed out that Gujarat Trial judge, failed to give even a single reason for serving the Congress leader with maximum sentence of two years' imprisonment.
- Court also said that Mr. Gandhi's alleged remarks, if made, were "not in good taste".

B) MOBASHAR JAWED AKBAR VS PRIYA RAMANI

- In Feb 2021, in **the Mobashar Jawed Akbar vs. Priya Ramani** a district court in Delhi, dismissed the criminal defamation case against Priya Ramani and acquitted her from all charges.
 - » Ms Ramani premised her defence on the First Exception to Section 499 which postulates that "*It is not defamation to impute anything which is true concerning any person, if it be for the public good that the exception should be made or published*".
 - » Ms Ramani also pleaded truth as her defence, made in good faith, in public interest, and for public good. She also contended that the complainant is not a man of stellar good and impeccable reputation, and the accused didn't defame him by publishing the tweets and articles.
 - » The court accepted the defence of the accused that she disclosed the truth regarding the incident of sexual harassment against her on the basis of testimony of two witnesses (Niloufer Venkatraman and Ghazala Wahab)

C) DEFAMATION PROVISIONS UNDER THE BHARTIYA NYAYA SANHITA, 2023:

- **Section 356:**
 - (1) Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes in any manner, any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.
 - **Explanation 1:** It may amount to defamation to impute anything to a deceased person if the imputation would harm the reputation of that person if living and is intended to be hurtful to the feelings of his family or other near relatives.
 - **Explanation 2:** It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.
 - **Explanation 3:** An imputation in the form of an alternative or expressed ironically, may amount to defamation.

- **Explanation 4:** No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

3) HATE SPEECH

- **Introduction:**
 - Hate Speech refers to any form communication (written, oral or otherwise) that **expresses hostility, prejudice or violence** towards individuals or groups based on attributes such as their **race, ethnicity, religion, gender, sexual orientation** etc. It often seeks to demean, dehumanize, or marginalize the targeted individuals or groups, and it can contribute to fostering a hostile or discriminatory environment.
- **Legal Provisions for Hate Speech:**
 - » India **doesn't have a formal legal framework** for dealing with hate speech.
 - » Several provisions of IPC can be invoked. These are primarily laws to deal with offences against religion. These include:
 - **Section 153A:** It penalizes promoting enmity between different groups on grounds on religion, race, place of birth, residence, language etc.
 - **Section 153B:** imputations, assertions prejudicial to national integration
 - **Section 295A:** It defines and prescribes punishment for deliberate and malicious acts, intended to **outrage religious feelings** of any class by insulting its religion or religious beliefs.
 - The chapter include other provisions also:
 - **Section 295:** Penalize damage or defilement of a place of worship with intent to insult the religion.
 - **Section 296, 297 and 298** also deal with religious issues.
 - » **Representation of People's Act, 1951:**
 - A person convicted under Section:
 - 153A of IPC;
 - Protection of Civil Rights Act, 1955 (preaching untouchability)
 - Is disqualified from being a MP/MLA
 - » **Religious Institutions (Prevention of Misuse) Act, 1988:**
 - Section 3(g) prohibits religious institutions or their managers from using religious premises to promote disharmony or hatred among various religious groups.

A) BHARTIYA NYAYA SANHITA, 2023:

- » **Section 196:** It penalizes - Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing **acts prejudicial to maintenance of harmony**.

- » **Section 299:** Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, commits any **tress pass in any place of worship or on any place of sculpture, or any place set apart for the performance of funeral rites** etc. shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine, or with both.
- » **Section 353(1) and 353(2):** In penalizes publication or circulation of any statement, false information, rumor, report etc. with intention of causing
 - 353(1):
 - (a): mutiny in security forces;
 - (b): fear or alarm to the public, or to any section of public whereby any person may be induced to commit an offence against the state or against the public tranquility.
 - (c): Inciting a community of persons to commit any offence against any other class or community.
 - 353(2): Feeling of enmity, hatred, ill will between different religious, racial, language or regional groups or castes or communities.

B) SUPREME COURT VERDICT (AUG 2023)

- Supreme Court advocated for 'practical and effective' steps to deal with the problem of hate speech so that its earlier decisions are followed both in letter and spirit.
 - It **sought responses from the state government**, on the status of their compliance with the **Tehseen Poonawalla** guidelines requiring **the establishment of district level officers**.

4) SECTION 66A OF THE INFORMATION TECHNOLOGY ACT AND SHREYA SINGHAL JUDGEMENT

- **What was Section 66A of the IT Act?**
 - » Section 66A was a provision under **IT Act, 2000** which was introduced by an amendment in 2008.
 - It gave the government power to arrest and imprison an individual for allegedly "offensive and menacing" online posts.
 - It empowered police to make arrests over what policemen, in terms of their subjective discretion, could construe, as "offensive" or "menacing" or for the purposes of causing annoyance, inconvenience, etc.
- **Did Section 66A curb or safeguard the social media?**
 - » The law prescribed 3-year jail for anyone causing "annoyance and inconvenience" on the social media. But annoyance and inconvenience are very subjective. Further, subjectivity of cyber cell of police as questionable. Moreover, it encroached upon the freedom of expression (specifically, freedom of expressing political dissent).
- **Supreme Court in Shreya Singhal vs Union of India quashed the Section 66A of the IT Act, 2000, for being violative of Article 19(1)(a) and not saved under Article 19(2)**
 - » **Background:**
 - A petition came up in the court following the **arrest of two girls in Maharashtra by Thane Police in November 2012 over a Facebook post**. The girls had made comments on the shutdown of Mumbai for the funeral of Shivsena chief Bal Thackeray. The arrests

triggered outrage from all quarters over the manner in which the cyber law was used. The petition was filed by Shreya Singhal, then a 21-year-old law student.

» **Supreme Court Verdict:**

- Section 66A is **unconstitutional** for being **violative of Article 19(1)(a)** and not saved under **Article 19(2)**.
 - These provisions were **vague** and had a **chilling effect** on the Constitutional Mandate.
 - It is **cast so widely that virtually any opinion on any subject would be covered by it**. And if it is to withstand the test of constitutionality, the **chilling effect on free speech would be total**.
- **Marketplace of idea doctrine** - "the truth will emerge from competition of ideas in free, transparent, public discourse and concludes that ideas and ideologies will be culled according to their superiority or inferiority and widespread acceptance among population."
- **The judgement** was considered a landmark judicial pushback against state encroachment on the freedom of speech and expression.
- **Supreme Court Verdict on the issue of continuous use of Section 66A of the IT Act (Oct 2022)**
 - **Background:** A write petition was filed by the NGO People Union for Civil Liberties (PUCL) which highlighted the issue of section 66A of IT Act being invoked despite the judgment in Shreya Singhal vs. UOI (2015).
 - **Supreme Court verdict:**
 - No one should be prosecuted under the section 66A of the IT Act.
 - Directions were issued to DGPs and Home Secretaries of all states to ensure that reference to section 66A is removed from all pending cases.
 - Bare Acts of IT Act published should adequately inform the readers that section 66A has been invalidated.

5) RIGHT TO PRIVACY

- **Evolution of Right to Privacy as a fundamental Right in India:**
 - Constitution of India, upon its adoption in 1950, didn't explicitly mention the right to privacy. However, the framers of the Constitution envisioned a holistic protection of individual rights under Article 21, which guarantees right to life and personal liberty. Over time, this broad provision became foundation for the development of right to privacy jurisprudence.
 - **MP Sharma case, 1954**
 - In this case, the SC had held that the Constitution of India didn't explicitly include the Right to Privacy as a fundamental right. It stated that the concept of privacy was not well-defined in Indian law, and therefore, it couldn't be invoked to challenge the validity of government action.
- **Kharak Singh Case, 1962**

- This case marked the first explicit reference to Right to Privacy by the Supreme Court. Though it recognized right to privacy as an essential element of personal liberty, it didn't rule on the constitutionality of surveillance.
- **Maneka Gandhi Case, 1978**
 - Though this case was not about Right to Privacy, it broadened the scope of Article 21 and held that personal liberty included more than just physical liberty. This laid foundation for the judicial interpretation of privacy in subsequent cases.
- **PUCL v. Union of India (1997)**
 - Here, the SC held that telephone tapping infringed upon an individual's right to privacy unless authorized by law and necessary in a domestic society.
 - This case established the principle that privacy is a fundamental right inherent in Article 21.
- **Justice K.S. Puttaswamy (Retd.) v. Union of India (2007)**: This landmark judgment marked the watershed moment in the evolution of right to privacy. The SC recognized privacy as a fundamental right under Article 21 and Article 19, with an individual's autonomy, personal dignity, and informational self-determination as integral aspect of privacy.

A) JUSTICE KS PUTTASWAMY VS UNION OF INDIA

- In **Justice K.S. Puttaswamy vs Union of India** case, a 9 judge constitutional bench, on 24th Aug 2017, unanimously affirmed that the Right to Privacy is a fundamental right under the Indian Constitution.
- **Key Highlights of the judgment**
 - The decision in **MP Sharma case (1955)** and **Kharak Singh Case (1962)** which held that right to privacy is not protected by the Constitution stands over-ruled.
 - The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as part of the freedoms guaranteed by Part III of the constitution.
 - » The court agreed that Privacy is a fundamental right and have provided an all-encompassing interpretation. All nine judges agreed that privacy was at the heart of individual self-determination, of dignity, autonomy, and liberty. It is inseparable from the meaningful exercise of other guaranteed freedoms such as speech, association, movement, personal liberty, and freedom of conscience.
 - **Right to Privacy is however not an absolute right.**
 - » It is a qualified right subject to national security, public interest, and other reasonable restrictions.
 - » But it may be **restricted only by state action that passes each of the three tests**:
 1. **First**, such state action must have legislative mandate.
 2. **Second**, it must be pursuing a legitimate state purpose.
 3. **Third**, it must be proportionate i.e., such state action - both in its nature and extent, must be necessary in a democratic society and the action ought to be the least intrusive of the available alternatives to accomplish the ends.

- » The courts will conduct as case-by-case analysis to determine the scope of this right to privacy.

B) OTHER JUDGEMENTS WHICH EMANATED DUE TO PUTTASWAMY JUDGMENT

- A number of landmark judgments since Puttaswamy have referred to this judgment:
 - » **Navtej Singh Johar vs Union of India** -> Decriminalized homosexuality
 - The judgement was built in part upon the **autonomy doctrine** of personal choice from the privacy doctrine
 - » **Joseph Shine v. Union of India** -> Decriminalized Adultery
 - » **Shafin Jahan v. Ashokan KM** -> Restrained the courts from dictating the choice of an adult women to choose her partner.

6) DIGITAL PERSONAL DATA PROTECTION ACT, 2023

- **Why in news?**
 - The Digital Personal Data Protection Bill, 2023 passed in both Lok Sabha and Rajya Sabha (Aug 2023)
- **Need of a Personal Data Protection Law**
 - i. **National Security**
 - ii. **Preventing Misuse of Data**
 - iii. **Protecting Fundamental Rights of Citizens:** Ensuring **Right to Privacy** which is a fundamental right (KS Puttaswamy judgement)
 - iv. **Strengthening of bargaining powers of Data Principals**
 - v. **Absence of Institutional Framework** for data privacy and security. For e.g. there was a lack of **independent supervisory authority** such as privacy commissioner that individuals may approach in case of noncompliance.
 - vi. **Right to Forget** is increasingly being considered an integral part of right to privacy, but this is not available in India yet.
- **Key Provision of the Act:**
 - i. **Definitions:**
 1. **Personal Data** is defined as any data about an individual who is identifiable by or in relation to such data.
 2. **Processing** has been defined as wholly or partially automated operation or set of operations performed on digital personal data.
 - ii. Unlike the 2019 bill, this act **narrows the scope of the data protection regime** to personal data protection.
 - It will apply to the processing of digital personal data within India where such data is collected online, or collected offline and is digitized. It will also apply to such processing outside India if it is for offering goods and services in India.
 - iii. **Consent:** Personal Data may be **processed only for a lawful purpose upon consent of an individual.**

- Consent may not be required for specified legitimate uses such as voluntary sharing of data by the individual or processing by the state for permits, licenses, benefits and services.
- iv. **Special Protection to Children:** The act places three conditions on data processing entities for children's data:
 - Obtaining Verifiable consent; Not causing harm to children; and no tracking or monitoring children or targeting ads to them.
- v. **Rights and Duties of Data Principal:**
 - Right to obtain information about processing, seek correction and erasure; Nominate other person to exercise rights in the event of death or incapacity; grievance redressal.
 - Duties include not registering false complaints; not furnishing false info or impersonate other person.
 - Violation of duties will be punishable.
- vi. **Obligation of Data Fiduciaries:** **Data Fiduciaries** are required to maintain the accuracy of data, keep data secure, and delete data once its purpose has been met; inform data principal and data protection board in case of a breach.
- vii. **Concession to Cross Border Data flow:** The bill allows transfer of personal data outside India, except to countries restricted by the Central government through notification.
- viii. **Exemptions:** Central government may **exempt government agencies** from the provisions in the interest of security of state, public order, and prevention of offences.
 - Personal data which is processed for research, archiving, or statistical purpose will also be exempted under clause 17(2)(b).
- ix. **Data Protection Board of India** - To be established by central government to adjudicate on non-compliance with the provision of the bill.
 - The members will be appointed for a period of 2 years and can be reappointed.
- x. **Amendment to IT Act, 2000** to remove clause for obligation on corporates to award damages to affect persons in case of negligent handling of sensitive data.
- xi. **Amendment to RTI Act, 2005** to protect the personal information from disclosure.
 - Section 44(3) of the bill amends section 8(1)(j) of the RTI Act, which will have the effect of totally exempting personal information from disclosure.

7) PERSONALITY RIGHTS

- **Why in news?**
 - » Delhi High Court protects Anil Kapoor's Personality Rights (Sep 2023)
- **What is a personality right?**

- » 'Personality Rights refer to the right of a person to protect his/her personality under the right to privacy or property. The personality may include name, images, voice, signature, or any other feature which is easily identifiable by the public.
 - This personality may be inappropriately used in commercials by various businesses to increase sales. Therefore, to protect their personality rights, famous people and celebrities take legal recourse in a court of law.
 - Many celebrities may register some aspects as a trademark to use them commercially. For e.g., Usain Bolt's 'bolting' or lighting pose is a registered trademark.

- **How is Personality rights protected in India?**

- » Personality Rights or their protection are not directly expressed in the Constitution of India or any of the laws, the **Indian Courts have sought to derive the same from Article 19(1)(a) and Article 21 of the Indian Constitution** and the **Right to Property**.
 - Many concepts in **Intellectual Property Rights** used in protection of trademarks such as passing off, deception etc can be applied while deciding whether a celebrity deserves to be protected through an injunction.

- **Important Court Verdicts in India:**

» **Anil Kapoor vs Simply Life India & Ors, 2023**

- Anil Kapoor had moved to the Delhi High Court in a civil suit seeking protection of his personality - his name, photograph, manner of speaking, gestures, etc. He also claimed protection of his copyright in a dialogue and in the image and other associated work.
- Kapoor's lawyer, IP Right specialists, Praveen Anand argued that several defendants had misappropriated Kapoor's name and elements of his persona to earn profits.
- The Delhi High Court passed granted ex-parte, omnibus injunction restraining 16 entities from using Kapoor's name, likeness, image, using technological tools like AI, face morphing, and even GIFs for monetary gain or commercial use.
 - **Note:** An ex-parte injunction is when relief is granted to a party without hearing the other side. An **omnibus injunction** granted against any unauthorized use-even those that are not mentioned in the plea.

» **Amitabh Bachchan Case vs Rajan Negi 2022**

- Delhi High Court injunctioned the use of personality rights including "unique style of addressing computer as 'Computer Ji' and lock kiya jaye.
- **The High Court had relied on a 2012 verdict: Titan Industries Ltd. V. Ramakumar Jewelers, 2012:**
 - » In this case the defendant unlawfully exploited the photograph of Indian actor Mr. Amitabh Bachchan and his wife, Ms. Jaya Bachchan, taken specifically for use in endorsing plaintiff's jewellery product.
 - » The **Delhi High Court** granted a permanent injunction against the defendant. It also observed that "a renowned person's name can be used in advertisements for business purpose, but only with the person's consent and approval.
 - » The court also defined 'celebrity' as a "a famous or a well-known person and is merely a person who "many" people talk about or know about".
 - » The court also held that "the right to control commercial use of human identity is the right to publicity".

- » **Shivaji Rao Gaikwad v. Varsha Production, 2015:** In this case the Madras High Court was dealing with a case that was filed by the reputed Indian actor Mr. Rajnikanth.
 - In this case the famous actor Rajnikanth had filed lawsuit against the producer of the movie "Main Hoon Rajnikanth" claiming that his name, image, style of delivering dialogue had infringed his personality rights.
 - The court observed that 'personality rights vests on those persons, who have attained the status of celebrity'. It said that from the title of the movie, the public viewing the movie would identify it with only the actor alone.
- » **Note:** Despite corporate bodies being viewed as legal persons by the legal system, the personality or publicity rights are specific to and applicable solely to "individuals" and not to corporate organizations.

8) PREVENTIVE DETENTION

- **What is Preventive Detention?**
 - Preventive detention is the arrest of a person to "prevent" a crime from happening i.e. there is a strong suspicion/probability that the arrested person if allowed to remain free would get involved in some illegal activities.
- **History of Preventive Detention Laws in the country**
 - Bengal Regulation III of 1818 -> empowered government to arrest anyone for defence or maintenance of public order without giving the person recourse to judicial proceedings
 - Rowlatt Acts of 1919 -> allowed confinement of suspect without trial.
 - Preventive Detention Act of 1950 - Expired on Dec 31, 1969
 - Maintenance of Internal Security Act (MISA) in 1971 -> repealed in 1977 by the Janta Party government.
 - National Security Act, 1980 -> brought by Indira Gandhi government when she came back to power.
- **Constitutional Provisions regarding Preventive Detention in India**
 - **Article 22(4)-22(7)** deals with cases of **preventive detention** here certain safeguards/rights have been provided to person getting detained under Preventive Detention Laws. These safeguards are available to **both Citizens and Aliens**.
 - » **(22(4)):** No person can be detained for a period more than 3 months (reduced to 2 months by 44th amendment, but not notified yet) unless
 - a. An advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is sufficient cause for such detention.
 - Nothing in the above sub-clause shall authorize detention beyond maximum period prescribed by parliament under sub clause (b) of clause (7)
 - » **(22(5))** provides for communication of grounds on which detention order has been made and affording earliest opportunity of making representation against order.
 - » **(22(6))** Nothing in clause (5) shall cause the disclosure of facts which the authority considers to be against the public interest to disclose.
 - » **(22(7))** provides that Parliament may by law provide for

- a. The circumstances under which, and the classes of cases in which a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board.
- b. The maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention.
- c. Procedure to be followed by an advisory board in an enquiry.

- **Other Constitutional Provisions**

- » Division of legislative powers
 - The parliament has exclusive power to make laws of preventive detention on the subjects of defence, foreign relations and security of India.
 - Both Parliament and State legislatures can concurrently make a law of preventive detention on subject of security of state, maintenance of public order and the maintenance of supplies essential to the community.

C) NATIONAL SECURITY ACT, 1980

- **About the Act**

- » It is a law aimed at preventing crimes which may affect India's security and public order. The provision of the act allows for preventive detention which can be extended for months.
- » **The grounds for preventive detention under the Act include:**
 - i. Acting in a manner which is prejudicial to the defence and security of India or India's relations with foreign powers.
 - ii. Regulating the continued presence of foreigners in India or for making arrangements for their expulsion from India.
 - iii. Preventing them from acting in a manner prejudicial to the security of the state, public order, or maintenance of supplies and services essential for the community.
- » Preventive detention under NSA happens through administrative order passed by the Divisional Commissioner or the District Magistrate (DM) - and not detention ordered by police based on specific allegations or for a specific violation of law.
- » Under the NSA, an individual can be detained without charge for upto 12 months (advisory board made of high court judges have to approve detention beyond 3 months); the state government needs to be intimated that a person has been detained under the NSA.
 - The person can be detained under the NSA for upto 10 days without being told the charges against them.
- » The detained person can appeal before the high court advisory board, but they are not allowed a lawyer during the trial.

- **Various Preventive Detention Laws under state governments**

- » Various state governments have their own Goondas Acts which provide for preventive detention for maintenance of public order, supply of essential commodities etc.

- **Criticism of the Preventive Detention laws** (violation of rights (human, constitutional and statutory); misuse; political tool; used regularly rather than in exceptional cases; violates separation of power; against the grain of fair trial; No Records with NCRB)

- **Arguments in support of Preventive Detention laws** (Necessary evil; reforms can reduce the misuse; Constitution allows reasonable restrictions on the ground of national security and public order)

- In July 2023, the Supreme Court emphasized on the importance of strictly adhering to procedural requirements in cases concerning preventive detention laws.
 - » The court recognized that "All laws on preventive detention are necessarily harsh. They curtail personal liberty of an individual, who is kept behind bars without any trial. In such cases, procedure is all a detainee has. Laws of preventive detention must therefore be strictly complied".

3. PLACES OF WORSHIP (SPECIAL PROVISIONS) ACT, 1991

- **Why in news?**
 - » A slew of petitions have been filed in the Supreme Court against the act, contending that the law has barred Hindus, Jains, Buddhists, and Sikhs, from approaching courts to "re-claim" their places of worship which were "invaded" and "encroached" upon by "fundamentalist barbaric invaders".
- The act prohibits conversion of any place of worship and provides for **maintenance of religious character of any place of worship** as it existed on 15th Aug 1947.
 - » **Section 3** of the act declares that **no person shall convert** any place of worship of any religious denomination into one of different religious denomination or sect.
 - » **Section 4(1)** provides that **religious character of a place of worship** shall continue to be the same as it was on 15th Aug, 1947.
 - » **Section 4(2)** provides that **all pending suits**, appeals or other proceedings regarding conversion of the character of a place of worship existing on 15th Aug 1947, will stand **abated when the act commences**, and no fresh proceedings shall be filed.
 - But **legal proceedings can be initiated** with respect to the conversion of the religious character of any place of worship **if the change of status took place after 15th Aug 1947**.
 - » **Exemptions:**
 - **Section 4(3)(a)** further **exempts** from the operation of the act, any place of worship which is an **ancient and historical monument** or an **archeological site** or remains **covered by Ancient Monuments and Archeological Sites and Remains Act, 1958**.
 - The act will also **not apply to any suit that has been finally settled or disposed of, any dispute that has been settled by the parties before the 1991 Act came into force, or to conversion of any place that took place by acquiescence**.
 - **Section 5 of the Act** particularly **exempts the Ram Janmabhoomi from its application**.
- **Ayodhya Judgment, 2019:**
 - » A five-judge bench of the Supreme Court had found that the 1991 Act spoke to our history and to the future of the nation... In preserving the character of places of public worship, the Parliament has mandated in no uncertain terms that **history and its wrong shall not be used as instruments to oppress the present and the future**.
 - » **But**, in an Oct 2022 hearing, Solicitor General Tushar Mehta, who appeared for the government, had however, ventured his personal opinion that the **remarks made in the Ayodhya Judgment about the 1991 act wouldn't preclude the court from examining the validity of the statute now**.

- **Supreme Court in July 2023:**
 - » The Supreme Court gave the Centre "sufficient time" till 31st Oct to clarify its stand on the validity of the **Places of Worship Act**.
 - Solicitor General Tushar Mehta had said that the government required "a little more time" to make its mind about the law. Earlier in 2022 and 2023 also government took a similar stance of seeking more time to make up its mind.
- **Analysis:** Arguments supporting the act:
 - » **Prevent future communal tensions.**
- **Various Grounds on which act is being challenged:**
 - a. **The act creates a statutory bar against judicial remedy:**
 - The act legitimizes historical forcible occupation of places of worship.
 - b. **Abatement of Pending Proceedings:**
 - Not only does the act obstructs aggrieved persons/ communities from taking recourse to legal remedies, it goes a step ahead by taking away pre-existing rights/ remedies of persons, who had already taken legal recourse to the injustice caused to them.
 - c. **Arbitrary and Irrational Cut-off date:**
 - The petitioners have argued that destruction/occupation of their religious places of worship has taken place over a period of centuries, which has **no nexus with the cut-off date of Aug 15, 1947.**
 - d. **Discrimination Qua Exception:**
 - The law is violative of Article 14, as it put worshipper of one deity (Lord Rama) on a higher pedestal than other Hindus who worship other deities.
 - e. **"Pilgrimages, other than pilgrimages to places outside India"** is mentioned in the state list.

A) GYANVAPI MOSQUE CASE

- **A suit was filed in 2022** in the Varanasi district court by a group of Hindu women worshippers seeking to assert their right to worship deities they claim are still found on the premises of the **Gyanvapi mosque**.
 - » The plaintiffs say that they have a right to worship Ma Sringar Gauri, Ganesh, Hanuman, and other "visible and invisible" deities.
- **Another batch of suits filed in 1991** seeking a declaration that a part of the site of the Gyanvapi mosque belongs to **Lord Vishweshwar**.
 - » The main basis for the suits is that the Hindu side says that an **old temple of Lord Vishweshwar lies at the centre of the Gyanvapi compound**. The site, they contend, is the abode of the 'self-manifested' deity since time immemorial. They claim that the **temple was demolished on the orders of Aurangzeb in 1669.**
- **Courts:**
 - » So far, court orders have favoured the position that these suits are **not barred by the Places of Worship Act**.
 - On the district court's order, the ASI has conducted a survey of the premises.
 - The **ASI report**, submitted to the Varanasi District Court, claims that a temple existed there prior to the construction of the mosque. **Subsequently, the court has allowed the conduct of Hindu prayers at a cellar on the premises.** The order allowing Hindu prayers

has been questioned by the Anjuman Intezamia Masjid Committee, which administers the Gyanvapi mosque.

B) SHAHI IDGAH OF MATHURA

- The suits in Mathura pertains to the Shahi Idgah mosque that stands adjacent to the Krishna Janmabhoomi Temple there. The suits claims that the **mosque was built over the birthplace of Lord Krishna**. The mosque committee denies the allegation.
 - **The dispute was settled** through a compromise between the Sri Krishna Janmasthan Seva Sansthan and the Shahi Idgah Trust in 1968 and implemented through a decree in 1974. As part of the settlement the Sansthan had given up a portion of the land to Idgah.
- **The current suits challenge** this compromise as 'fraudulent' and seek the transfer of the entire parcel of land to the deity.
- **The Allahabad High Court** has transferred to itself all suits pertaining to the Mathura dispute.

C) WHY HAS THE PLACES OF WORSHIP (SPECIAL PROVISIONS) ACT, 1991 NOT BARRED SUITS ON GYANVAPI AND SHAHI IDGAH

- In both the disputes, the respective mosque committees had opposed the suits using the provisions of Places of Worship (Special Provisions) Act, 1991. However, the **court orders so far say the Act doesn't bar these suits and that they must go on**.
- **In the Gyanvapi case**, the ruling is that the suits aimed to assert the right of worship of Hindu deities and didn't seek to convert the status of the mosque.
 - » **Regarding the earlier batch of suits**, the Allahabad High Court has taken the view that the **Act doesn't define the term 'religious character'**. A structure can't have the dual character of being both Hindu and Muslim, and that only an examination of evidence can determine its religious character. The act can't be an absolute bar on proceedings to ascertain its religious character.
- **Regarding Mathura Dispute:**
 - » The **district court** has taken the view that the suits are not barred by the Places of Worship Act, as what is under challenge is the compromise decree based on the 1968 agreement. As the decree was drawn up before the commencement of the 1991 act, it is not applicable in the case.

4. BHARTIYA NYAYA (SECOND) SANHITA, 2023 (BNS2)

- **Why in news?**
 - **Bhartiya Nyaya Sanhita, 2023; Bhartiya Nagarik Suraksha Sanhita 2023; and Bhartiya Sakshya Adhiniyam, 2023** passed by both houses of the Parliament (2023)

- **Background: Indian Penal Code (IPC), 1860:** It is the principal law on criminal offence in India. It includes offences those affect:
 - (i) Human Body such as assault and murder.
 - (ii) Property such as extortion and theft.
 - (iii) Public Order such as unlawful assembly and rioting.
 - (iv) Public health, safety, decency, morality, and religion
 - (v) defamation
 - (vi) offences against state
 - **Over the years**, several new offences have been added. **Courts have also decriminalized several offences** such as homosexuality, adultery, attempt to suicide.
 - **Several states** have amended the IPC to provide different punishments for sexual offences, selling minors for prostitution, adulteration of food and drugs and sacrilege of religious texts.
- **Bhartiya Nyaya Sanhita (BNS)** was introduced on 11th Aug 2023. It was examined by the Standing Committee on Home Affairs. The **BNS2** was introduced in Dec 2023 to incorporate some recommendations of the standing committee.
- **Bhartiya Nyaya (second) Sanhita, 2023 (BNS2, 2023): Key Highlights**
 - **Offences against body:**
 - The IPC criminalizes acts such as murder, abetment of suicide, assault, and causing grievous hurt.
 - **The BNS2 retains these provisions**. It adds new offences such as:
 - **Terrorism** is defined is defined as an act that intends to threaten the unity, integrity, security or economic security of the country, or strike terror in the people.
 - Earlier, terrorism was covered under UAPA, 1967.
 - **Organized Crimes** includes crimes such as kidnapping, extortion, and cyber-crime committed on behalf of a crime syndicate. Petty organized crime is also an offence now.
 - So far, Organized crime is covered under state laws such as the **Maharashtra Control of Organized Crime Act, 1999 (MCOCA)**, and similar laws enacted by Karnataka, Gujarat, Uttar Pradesh, Haryana and Rajasthan.
 - **Significance:** Since the organized crimes may occur in all states, so addition of organized crime under BNS2 makes sense.
 - **Concerns:**
 - Duplication with several state laws.
 - Bhartiya Nagarika Suraksha (Second) Sanhita, 2023 (BNSS2) and Bhartiya Sakshya (Second) Sanhita (BSS2) don't provide for a separate criminal procedure for these offences.
 - **But, special laws like UAPA have several departures** from ordinary criminal procedure. The remove several safeguards such as condition of bail and the establishment of police confessions. NIA Act 2008 establishes special courts for terrorism cases.
 - **Under BNSS2**, case of terrorism will be tried in session courts. This will result in varying investigation and trial procedure for similar offences.

- **Mob Lynching:** The BNS2 adds murder or grievous hurt by five or more people on specified grounds, as an offence. These grounds include race, caste, sex, language, or personal belief.
- **Sexual Offences against women:**
 - **The IPC** criminalizes acts such as rape, voyeurism, stalking, and insulting the modesty of a woman.
 - **BNS2** retains these provisions. It increases the threshold for the victim to be classified as a major, in the case of a gangrape, from 16 to 18 years of age. It also criminalizes sexual intercourse with a woman by deceitful means or making false promises.
- **Sedition is no more an offence.**
 - **BNS2** instead penalizes the following:
 - (i) exciting or attempting to excite secession, armed rebellion, or subversive activities,
 - (ii) encouraging feelings of separatist activities, or
 - (iii) endangering the sovereignty or unity and integrity of India.
 - These offences may involve exchange of words or signs, electronic communication, or use of financial means.
- **Rulings of the Supreme Court** have been incorporated and several offences have been omitted. It includes adultery, homosexuality etc. as offence.
- It introduces community service as a form of Punishment in offences such as: (i) theft of property worth less than Rs 5,000, (ii) attempt to commit suicide with the intent to restrain a public servant, and (iii) appearing in a public place intoxicated and causing annoyance.
 - **Concern:** The BNS2 doesn't define what community service will entail and how it will be administered. The Standing committee had recommended defining the term and nature of 'community service'.
- **Key Issues:**
 - a. **Age of Criminal Responsibility higher than several other jurisdictions:**
 - Under IPC, nothing is considered an offence if committed by a child below the age of 7 years. The age of criminal responsibility increases to 12 years, if the child is found to not have attained the ability to understand the nature and consequence of his conduct.
 - The BNS2 retains these provisions. This age is lower than the age of criminal responsibility in other countries (Germany: 14 years; England and Wales: 10 years; Scotland: 12 years). In 2007, a UN Committee recommended states to set the age of criminal responsibility to above 12 years.
 - b. **Age threshold of the victim for similar offences against children varies:**
 - For rape, the penalty is different based on whether the victim's age is below 12 years, between 12 and 16 years, or above. This is **inconsistent with POCSO, 2012**, which classifies all individuals below the age of 18 as minor.
 - Under BNS2, age threshold of the victim for certain offences against children is not 18 years.
 - For e.g. Kidnapping or abducting a child with the intent to steal from a parent applies only to a child under 10 years.

- It means that if a child of age 11 years or above is kidnapped, it would be treated as kidnapping of adult.

c. **Duplication of offences with other special laws:**

- This overlap may cause additional compliance burden and costs. It may also lead to multiple laws providing varying penalties for the same offences; it may also lead to multiple regulatory regimes.

BNS2	Special Law
<i>Adulteration of food or drink for sale</i>	
Imprisonment up to 6 months, fine up to Rs 5,000, or both.	The Food Safety and Security Act, 2006: Imprisonment up to life, and a fine up to Rs 10 lakh for manufacture, storage, sale of unsafe food. Sentence proportionate to damage caused. (Sec. 59)
Non-Cognizable, bailable. (IPC Sec. 272, 273; BNS2 Clause 274, 275)	
<i>Adulteration of drugs, and sale of adulterated drugs</i>	
Adulteration penalised with imprisonment up to a year, fine up to Rs 5,000, or both.	The Drugs and Cosmetics Act, 1940: Consumption of adulterated drugs causing death or grievous hurt penalised with imprisonment between 10 years and life, and fine of at least Rs 10 lakh, or 3 times the value of the seized drugs, whichever is higher.
Sale of adulterated drugs penalised with imprisonment up to 6 months, fine up to Rs 5,000 or both.	
Non-Cognizable, bailable. (IPC Sec. 274, 275; BNS2 Clause 276, 277)	In other cases, penalty is imprisonment of 3-5 years, and fine of at least Rs 1 lakh, or 3 times the value of the seized drugs, whichever is more. (Sec. 27)
<i>Unlawful compulsory labour</i>	
Imprisonment up to one year, fine, or both.	The Bonded Labour System (Abolition) Act, 1976:
Cognizable, Bailable. (IPC Sec. 374; BNS2 Clause 146)	Imprisonment up to 3 years and fine up to Rs 2,000. (Sec. 16, 17, 18).
<i>Abandoning a child</i>	
Parent or guardian abandoning a child below the age of 12 is punishable with imprisonment up to 7 years, fine, or both.	The Juvenile Justice Act, 2015: Abandoning or procuring a child for abandonment is punishable with imprisonment up to 3 years, fine up to Rs 1 lakh, or both. Biological parents abandoning a child due to circumstances beyond their control are exempt. (Sec. 75)
Cognizable, bailable. (IPC Sec. 317; BNS2 Clause 93)	

Rash driving

Punishable with imprisonment up to 6 months, fine up to Rs 1,000 or both.

Cognizable, bailable, non-compoundable. (IPC Sec 279; BNS2 Clause 281)

The Motor Vehicles Act, 1988: Punishment for first offence: imprisonment up to 6 months, and/or fine up to Rs 5,000.

Subsequent offence within three years: imprisonment up to 2 years and/or a fine up to Rs 10,000. Cognizable, bailable, compoundable. (Sec. 184)

d. Penalty for a crime by member of a gang differs from that of an individual

- The BNS2 defines **petty organized crime** as an offence. It includes: vehicle theft, pick-pocketing, selling of public examination papers, any other similar criminal acts. To qualify as petty organized crime such offence must be committed by members of a group or gang. This offence is penalized with imprisonment of one to 7 years, and a fine.
- **But, the penalty creates a distinction between the offence committed by a member of a gang and a person committing an offence on his own.**
 - For e.g., the penalty for a theft is upto **3 years imprisonment**, whereas if the same is committed by a gang or group, the penalty is between 1 to 7 years of imprisonment.

e. In the offence of Rape, several recommendations made by Justice Verma Committee and Supreme Court has been ignored

f. **BNS2 retains the provisions for Solitary confinement** for offences that are penalized with rigorous imprisonment. Such offences include criminal conspiracy, sexual harassment, kidnapping or abducting to murder. The BNS2 retains these provisions.

- **But, Supreme Court** (1979) has held that measures such as pushing prisoners into solitary confinement deprives them of their right to life and liberty under Article 21.
- **In 1971**, even Law Commission of India recommended removing solitary confinement from the IPC.

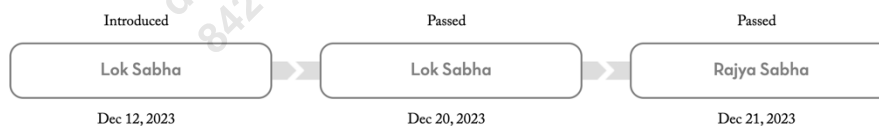
g. **Some Drafting Issues:**

- For e.g. BNS2 doesn't retain section 377. This implies that rape of an adult man will not be an offence under any law, neither will having intercourse with an animal. The standing committee of Home Affairs (2023) has recommended re-introducing this provision.

5. BHARTIYA NAGRIK SURAKSHA (SECOND) SANHITA, 2023 (BNSS2, 2023)

- Why in news?

Ministry: Home Affairs



- Background:

- The Code of Criminal Procedure, 1973 (CrPC) is a procedural law established for the administration of the Indian Penal Code (IPC). It governs the procedure for investigation, arrest, prosecution, and bail for offences.
- CrPC was first brought in 1861 to address the problem of multiplicity of legal system in India. The existing CrPC was introduced in 1973 to replace the previous one. It introduced the concept

of anticipatory bail. It was amended in 2005 to add changes such as provisions for plea bargaining and rights of arrested persons.

- **CrPC governs the procedural aspects of criminal justice in India**. The key features include:
 - **Separation of Offences**: The CrPC classifies offences into **two categories**:
 1. **Cognizable offences** are those in which police can arrest and initiate an investigation without a warrant.
 2. **Non-Cognizable** offences require a warrant and, in some cases, a complaint by the victim or a third party.
 - **Nature of Offence**: CrPC dealt with various types of offence including traffic violation to murder.
 - **Bailable and non-bailable offence**: Bailable offence are those in which the accused has the right to bail from police custody.

- **The BNSS, 2023** was introduced in Lok Sabha in Aug 2023. The bill was examined by the Standing Committee on Home Affairs. **BNSS2** was introduced in Dec 2023 after incorporating some recommendations of the committee.
- **The BNSS2 retains most of the provisions of CrPC**: Key changes proposed include:
 - » **Detention of Undertrials**:
 - **CrPC** says that if an accused has spent half of his maximum period of imprisonment in detention, he must be released on personal bond. This doesn't apply to offences punishable by death.
 - **The BNSS2** retains the above provision and adds.
 - **First time offenders**, get bail after serving one-third of the maximum sentence.
 - **The BNSS2** also adds that provisions will also not apply to:
 - (i) Offences punishable by life imprisonment and (ii) Person against whom proceedings are pending in more than one offence.
 - » **Medical Examination**:
 - **CrPC** allows medical examination of the accused in certain cases, including rape cases. This medical examination can only be done after request from at least a sub-inspector level police officer.
 - **The BNSS2** provides that **any police officer** can request such examination.
 - » **Forensic Investigation**: The BNSS2 mandates **forensic investigation** for offences punishable with **seven years' imprisonment** or more.
 - Forensic experts will visit crime scenes to collect forensic evidence and video record the process.
 - » **Signature and Finger Impressions**: The **CrPC empowers a Magistrate** to order any person to provide **specimen signature or handwriting**.
 - **BNSS2** expands this to include finger impressions and voice samples. It allows these samples to be collected from a person who hasn't been arrested.
 - » **Timeliness for Procedure**: The BNSS2 prescribes timelines for various procedures.
 - For instance, it acquires medical practitioners who examine rape victims to submit their reports to the investigating officer within 7 days.

- Other specified timelines include: (i) giving judgement within 30 days of completion of arguments (extendable upto 45 days), (ii) informing the victim of progress of investigation within 90 days, (iii) framing of charges by a sessions court within 60 days from the first hearing on such charges.
- » All trials, inquiries, and proceedings may be held in electronic mode. Production of electronic communication devices, likely to contain digital evidence, will be allowed for investigation, inquiry, or trial.
- » **If a proclaimed offender has absconded to evade trial** and there is no immediate prospect of arresting him, the **trial can be conducted, and judgement pronounced in his absence**.
- » **Hierarchy of Courts:**
 - The **CrPC establishes a hierarchy of courts** for the adjudication of criminal matters in India.
 - These include: (i) **Magistrate's Courts**: subordinate courts responsible for the trial of most criminal cases, (ii) **Sessions Courts**: Presided over by sessions judge and hear appeals from Magistrate's courts (iii) **High Courts**: They have inherent jurisdiction to hear and decide criminal cases and appeals, and (iv) **Supreme Court**: Hear appeals from High Courts and also exercise its original jurisdiction in certain matters.
 - The CrPC empowers the state governments to notify any city or town with a population of more than 1 million as a metropolitan area. Such areas have **Metropolitan magistrate**. The **BNS2 removes the classification of metropolitan areas and Metropolitan magistrate**.

6. BHARTIYA SAKSHYA ADHINIYAM, 2023 (BHARTIYA SAKSHYA (SECOND), BILL, 2023)

- **Background:**
 - » The Indian Evidence Act, 1872 (IEA) **governs the admissibility of evidence in Indian Courts**. It applies to all **civil and criminal proceedings**.
 - » With changing times and technology, IEA has been regularly amended. For e.g. In 2000, the IEA was amended to provide for the admissibility of electronics records as secondary evidence. In 2013, it was amended to add provisions related to consent in case of rape. It shifted the onus on accused to prove that consent was given and added that the character of the victim and sexual history will not be relevant when determining consent.
- **Bhartiya Sakshya Adhiniyam, 2023:**
 - » It **retains most of the provisions of IEA**. These include:
 - i. **Admissible Evidence**: Parties in a legal proceeding can only present admissible evidence. Admissible evidence can be classified as either 'facts in issue' or 'relevant facts'.
 - IEA provides for two kinds of evidence - documentary and oral evidence.
 - ii. **Police Confessions**: Any confession made to a police officer is inadmissible. Confessions made in police custody are also inadmissible, unless recorded by a Magistrate. However, if a fact is discovered as a result of information received from an accused in custody, that information may be admitted if it distinctly relates to the fact discovered.

» **Key changes made by BSA, 2023 include:**

- i. **Documentary Evidence:**
 - Under the IEA, a document includes writings, maps, and caricatures.
 - The BSA, 2023 adds that electronic records will be considered as documents.
- ii. **Oral Evidence:**
 - Under the IEA, oral evidence includes statements made before Courts, by witnesses in relation to a fact under inquiry.
 - BSA, 2023 allows oral evidence to be given electronically. This would permit witnesses, accused persons, and victims to testify through electronic means.
- iii. **Admissibility of Electronic or digital records as evidence:** Documentary evidence includes information in electronics records that have been printed or stored in optical or magnetic media produced by a computer.
 - **BSA (or BSB2) provides that electronic or digital records will have the same legal effect as paper records.**
- iv. **Secondary Evidence:** The BSA, 2023 expands secondary evidence to include: (i) Oral and Written Admissions, and (ii) the testimony of a person who has examined the document and is skilled to examine the documents.
- v. **Joint Trials:** A joint trial refers to the trial of more than one person for the same offence.
 - **The IEA states that in a joint trial, if a confession made by one of the accused which also affects other accused is proven, it will be treated as a confession against both.**
 - **The BSA adds an explanation to this provision. It states that a trial of multiple persons, where an accused has absconded or has not responded to an arrest warrant, will be treated as a joint trial.**