Bharatiya Sakshya (Second) Act, 2023

Why in news?

It is a transformative legislation introduced to amend the Indian Evidence Act (IEA) of 1872.

What are the provisions retained from the Indian Evidence Act 1872?

- **Admissible evidence-** It can be classified as either facts in issue or relevant facts.
  - **Facts in issue-** It refer to any fact that determines the existence, nature or extend of any right, liability or disability claimed or denied in a legal proceeding.
  - **Relevant facts**- They are facts that are pertinent to a given case.
- **Proved fact-** A fact is considered proven when, based on the evidence presented, the Court believes it to either
  - Exist, or
  - Its existence so likely that a prudent man should act as if it exists in circumstances of the case.
- **Police confession**-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.

What are the difference between IEA and BSB2?

Key features	Indian Evidence Act, 1872 (IEA)	Bharatiya Sakshya (Second) Act, 2023 (BSB2)
Documentary evidence	A document includes writings, maps, and caricatures	It adds that electronic records will also be considered as documents
Classification of documentary evidence	• It includes primary and secondary evidence. • Primary evidence includes the original document and its parts, such as electronic records and video recordings. • Secondary evidence contains documents and oral accounts that can prove the contents of the original.	• It retains the classification of documentary evidence. • It expands secondary evidence to include - Oral and written admissions, and - Testimony of a person who has examined the document and is skilled to examine the documents.

Oral evidence	• It includes statements made before Courts by witnesses in relation to a fact under inquiry.	• It allows oral evidence to be given electronically. This would • It permit witnesses, accused persons, and victims to testify through electronic means.
Admissibility of electronic or digital records as evidence	• Documentary evidence includes information in electronic records that have been printed or stored in optical or magnetic media produced by a computer. • Such information may have been stored or processed by a combination of computers or different computers.	• It provides that electronic or digital records will have the same legal effect as paper records. • It expands electronic records to include information stored in semiconductor memory or any communication devices (smartphones, laptops). • This will also include records on emails, server logs, smartphones, locational evidence and voice mails.
Joint trial	• A joint trial refers to the trial of more than one person for the same offence. • The Act 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.	• It adds an explanation to this provision. • It states that the trail of multiple persons, where an accused has absconded or has not responded to an arrest warrant, will be treated as a joint trial.

What are the cons of BSB2?

- **Tampering of electronic records**- The Act provides for admissibility of electronic records, there are no safeguards to prevent the tampering and contamination of such records during the investigation process.
- In 2014, the Supreme Court recognised that electronic records are susceptible to tampering and alteration.
- **Ambiguity-** Electronic records must be authenticated by a certificate to be admissible as documents, the Act retains these provisions for admissibility.
- The Act also classifies electronic evidence as documents which may not need certification, this creates contradiction.
- **Facts discovered in police custody**- In IEA, a fact discovered due to information received from an accused in police custody may be provable. BSB2 retains this provision.
- Courts and Committees have noted that facts may be discovered in police custody by coercion, without adequate safeguards.
- **Admissibility of facts-** Both IEA and BSB2 allows information to be admissible if it was obtained when the accused was in police custody, but not if he was outside. The Law Commission recommended to remove this distinction.
- **Recommendations of Law Commission**- Provisions like the presumption that the

police officer caused the injuries if an accused was injured in police custody was not incorporated.

Reference

PRS- Bharatiya Sakshya (Second) Bill, 2023

