1. **Changes in the Definition**

- **Definition of Electronic Records**: Electronic records now include a wide range of digital data such as emails, server logs, documents on electronic devices, messages, websites, and digital voice mails.

  (A server log files is a simple text document that contains all activities of a specific server in a given period time (e.g., one day). It is automatically created and maintained by the server, and it can provide you with a detailed insight into how, when, and by whom your website or the application was accessed)

**Electronic Evidence**

- **THE CONTEXT**: The Bhartiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam aim to modernize the legal framework to address contemporary challenges, particularly in handling electronic evidence or e-evidence.

- ‘**Electronic Evidence**’ is included in the category of ‘**Documentary Evidence**’

- Section 2 (1) (d) Illustration No. (vi) *An electronic record on emails, server logs, documents on computers, laptop or smartphone, messages, websites, locational evidence and voice mail messages stored on digital devices are documents;*

- Under the Indian Evidence Act, electronic evidence could have been taken as a third category of ‘evidence’, other than ‘oral’ and ‘documentary’ evidences. It is more so in view of the interpretation given to Section 65B by the Hon’ble Supreme Court
judgment in *Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal & Ors. (2020) 3 SCC 216.* In this decision it was said that Electronic Evidence is (specially) dealt with “notwithstanding anything contained” in the Act.

- By virtue of the definitions in the new act, **Electronic Evidence** is included in the ‘**Documentary Evidence**’. It is definite that it is with a view to expand the scope of the application of **Electronic Records in evidence**.

2. **Changes on Primary Evidence**

- **Electronic Records are also Included in the category, Primary Evidence**

- ‘Primary Evidence’ includes-

  - (i) electronic record that is stored in another electronic devise along with that in the ‘creating’ devise; and

  - (ii) video recordings (a) simultaneously stored in electronic form and (b) broadcasted.

- **Section 57 BSA (Primary Evidence)**

  - **Explanation 4.**—Where an electronic or digital record is created or stored, and such storage occurs simultaneously or sequentially in multiple files, each such file is primary evidence.

  - **Explanation 5.**—Where an electronic or digital record is produced from proper custody, such electronic and digital record is primary evidence unless it is disputed.

  - **Explanation 6.**—Where a video recording is simultaneously stored in electronic form and transmitted or broadcast or transferred to another, each of the stored recordings is primary evidence.

  - **Explanation 7.**—Where an electronic or digital record is stored in multiple storage spaces in a computer resource, each such
automated storage, including temporary files, is primary evidence.

- The scope of application of Electronic Records in evidence is further expanded by the Additional Explanations 4 to 7 in Sec. 57 (as to ‘Primary Evidence’). Major changes having practical importance are the following:

- **Under Explanation 4**, electronic or digital record that is stored in an electronic devise, simultaneously (or sequentially in multiple files) with that in the ‘creating’ devise, is also taken as ‘primary evidence’.

- Core-computer system in Banks and storing in ‘iCloud’ etc. are good examples for such storage.

- Sixth explanation has also wider application. As is clear from the explanation, video recordings (a) simultaneously stored in electronic form and (b) transmitted or broadcasted can also be taken as primary evidence.

- **Explanation 5** renders a rider. Production of electronic or digital record from proper custody (unless it is disputed) is necessary to treat it as ‘primary evidence’.

- Admission of electronic record contained in a stolen devise seized from an accused is a good example for it.

3. **Scope of Secondary Evidence also Expanded**

- **Oral and written admissions**, as well as the evidence of ‘skilled persons’, are added in the list of Secondary Evidence.

- **Section 58 BSA (Secondary evidence)** more types included

- (vi) oral admissions;

- (vii) written admissions;
(viii) evidence of a person who has examined a document, the original of which consists of numerous accounts or other documents which cannot conveniently be examined in Court, and who is skilled in the examination of such documents.

The new clauses in Sec. 58, that speaks about Secondary Evidence, also show the legislative intent of liberalization in evidence in legal proceedings. Certificates and Reports of ‘skilled persons’ (as regards the documents which cannot conveniently be examined in Court) are added in the list of Secondary Evidence.

4. **Section 61, a New Provision**

- It widened the scope of admissibility of Computer output. It permits to invoke other provisions of the Act also to prove secondary evidence of Electronic Record (other than Sec. 63, old 65B).

- **61. Electronic or digital record** Nothing in this Adhiniyam shall apply to deny the admissibility of an electronic or digital record in the evidence on the ground that it is an electronic or digital record and such record shall, subject to section 63, have the same legal effect, validity and enforceability as other document.

**Importance of this New Provision**

- The words in the new Sec. 61, “Nothing in this Adhiniyam shall apply to deny the admissibility” has great significance. It is made to expand the scope of admissibility of Electronic Evidence.

- The non-obstante clause in Sec. 65B (Sec. 63, BSA) is capable of giving two (divergent) interpretations –

Sec. 65B (Sec. 63, BSA) is an First, enabling provision to admit ‘computer output’ (derived from original) as ‘document’ itself, in a simpler manner, by the deeming provision (“shall be deemed to be also a document”) ‘notwithstanding anything contained in the
That is, computer output (copy) can also be proved by any other manner provided for proving any other document.

Second, a computer output (copy) can be proved only under the provisions of Sec. 65 B, ‘notwithstanding anything contained in the Act’. (It is the view taken by the Hon’ble Supreme Court in Arjun Panditrao v. Kailash Kushanrao, 2020-3 SCC 216.)

- The words in the new Sec. 61, “Nothing in this Adhiniyam shall apply to deny the admissibility” makes an emphatic delineation of the legislative intent on the following two matters –

1. Sec. 65B (Sec. 63, BSA) is an enabling provision to admit ‘computer output’ (copy) by the deeming provision ‘notwithstanding anything contained in the Act’.

2. The view taken in Arjun Panditrao v. Kailash Kushanrao, 2023 SCC 216, is that a ‘computer output (copy) can be proved only’ under the provisions of Sec. 65B, ‘notwithstanding anything contained in the Act’. It is no more a good law in view of the change by Sec. 61.

- “Nothing in this Adhiniyam shall apply to deny the admissibility of an electronic” record on the ground that it is an electronic record and “such record shall, subject to Section 63, have the same legal effect, validity and enforceability as other document” applies to Sec. 63 also. Therefore, the interpretation given in Arjun Panditrao v. Kailash Kushanrao, 2023 SCC 216, will not remain in force.

The words, “subject to section 63” (BSA), in Section 61 (BSA), only directs to undergo the requirements in Sec. 63 (that is production of Sec. 63(4) certificate and HASH certificate etc. to prove the Computer output, in case (or, only when) one opts to prove it under the provisions of Sec. 63.

- Section 65A is changed to 62 (as it is)
5. **Major Changes made in Sec. 65B IEA**

- Sec. 63 read with Sec. 61 (BSA) allows to prove the copy or print-out of an electronic record invoking other provisions of the Sakshya Act, also.

Now, under Sec. 65B of the Indian Evidence Act, copy or print-out of an electronic record can be proved only by producing the certificate provided under Sec. 65B(4), in view of the Supreme Court decision in *Arjun Panditrao v. Kailash Kushanrao*, 2020-3 SCC 216.

- The proposed **Bhartiya Sakshya Act, 2023**, (Sec. 63 read with Sec. 61) allows to prove the copy or print-out of an electronic record invoking other provisions of the Evidence Act (such as Sec. 63 and 65 IEA = Sec. 58 and 60 BSA) that permits to prove a secondary evidence (copy) of a document.

- If a computer output (copy) is sought to be proved invoking Sec. 63, **Bhartiya Sakshya Act, 2023**, the “**certificate (HASH) specified in the Schedule**” is necessary. It is to be produced “along with the electronic record” also.

- Format of Certificate presented along with digital evidence under Section 63(4)(c) Part A (Party) and Part B (Expert)