

KANININAR SERIES-

65 A & 65 B Indian Evidence Act –Webinar Dated 14.06.2020.

Participants Questions and Response By

Mr. Balu Swaminathan, President, Cyber Society of India.

Q-1. Being a forensic examiner of a particular digital material, whether it needs to be produced a 65 B certificate? Qr-Mr. K.Manivannan

I would like to say in detail. Forensic's digital analysis report prepared by the Scientific Assistants by using a computer as a tool and also signed by them after taking printouts needs no certificate. However for the Annexure which are relied by the Scientific Assistant to prepare their report needs Certificate under section 65 B Indian Evidence Act

Scientific Assistants forensically examining/ analyzing the digital evidence storage media for the information contained in the Electronic Record and copying in CDs and also taking print outs. Scientific Assistants, adding the print outs as Annexures and submitting CDs also along with the Forensics digital analysis report. Hence the information contained in the Electronic Record produced by the computer in the forensic lab due to placing of digital storage media sent by the Police officer through court, is one of the activities mentioned in section 65 B (4) (b) of Indian Evidence Act.

Q- 2. How a person giving 65b Certificate for the data which is not his own property will verify the veracity of the digital data and it becomes the evidence in the Court?

Qr-Mr. K.Manivannan. Scientific Assistant.

Computer cannot come to the court to give evidence sensed by it (oral evidence) or written (Documentary Evidence) by it. Since we have seen the Digital Baby produced in our computer, we have to take it to the court for being admitted and 65b Certificate is not for certifying the content.

Q -3. For physical/manual documents produced in the court as Documentary Evidence, no Certificate is insisted upon for relevancy and admissibility, but for electronic documents, why it is insisted notwithstanding its genuineness? What is the distinguishing feature in this? Qr-Mr.S.Balasubramanian, Advocate.

First categories of Documents are created by Human and second categories of documents are created by Computer. Let us imagine a road accident case witnessed by Human and CCTV. During trial Human witness appearing in the court with Brain (Computer) Electronic Record and Delivering the relevant statement by retrieving from the Brain directly before the Court after taking an oath and undergone Cross Examination. Whereas, CCTV Computer,

delivered the computer output, outside the court and not able to appear before the court to speak the relevant statement. Hence the person viewed the footage and copied in CDs etc. must produce a certificate to say that it is the Computer Output from the Electronic Record containing the relevant information of the case copied in a CD from the DVR Computer.

Q -4. Can we interpret the Screen shots from mobile as admissible evidence, be it primary or secondary? Qr-Ms. Subha.

Yes the screen shots from Mobile maybe used as evidence with 65 B Certificates. A screenshot is an image that shows the contents of a computer display. Image is also information and considered as Electronic Record. It will come under 65B (4) (a) IEA. You consider as computer output printed on the mobile screen.

Q -5. Whether 65b certificate demands a third party or person's involvement in between the client and the Court? Qr. Mr. K.Manivannan. Scientific Assistant.

I would like to add my observations. In continuation of discussion of the Questionnaire I could understand what actually he is asking through that question.

Imagine a situation that in the website of an Educational institution in the photo gallery one of the students has seen a nude photograph of a woman and informed to the Principal and subsequently given statement to the Police. In such situation ,whether that student has to give 65 B Certificates or not? Even though he has done one of the things mentioned in 65B (4) i.e clause (a) he did not print or copy the information contained in the electronic record produced in his laptop ,in optical or magnetic media. Hence, he needs not to give any certificate under 65 B IEA.

Q-6.Who can give 65B Certificate? The applicability of procedural requirement under Section 65B(4) of the Evidence Act of furnishing certificate is to be applied only when an electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party.

Qr.Dr. E. ENANALAP PERIYAR, Assistant Professor

First of all we have to understand the situations requiring 65 B certificates.

1. Desired to give a statement in Evidence. (65 B (4) IEA)
2. Doing any of the activities /things mentioned in 65 B (4)(a) & (b)
3. Computer output -Print (Hard copy) or Soft copy (in optical or magnetic media) the information contained in the electronic record produced in the computer of the Human, who witnessed the Digital Baby.

In short when a Human seen any information in an Electronic Record in his computer (desired for admissibility as evidence in the court) he/she has to issue certificate. Electronic Record means information stored/sent/received in Electronic form.

The question of giving particulars of device involved in the production of that Electronic Record for the purpose of showing that Electronic Record was produced by a computer as mentioned in 65B(4)(b) does not arise in all the situations. This situation arises in case CCTV Footage etc. Electronic Record produced in the DVR Computer due to CCTV Camera & Micro phone devices through which video file & Audio file sending the signals to the DVR causing the information recorded in the Electronic Record. We have to note other doing of Human as mentioned in 65B (4) (a) identifying the electronic record containing the statement and describing the manner in which it was produced.

If he did not seen the relevant information recorded in the Electronic Record in a computer, there is no necessity for furnishing certificate. Mere receipt of or possession of a computer output by a person does not require a certificate.

Q -7. Now days everything is an output of electronic device whether all those require 65B (4) certificate is mandate. Medical bills, train tickets, etc., are also copy generated from computer. Whether certificate is necessary? Qr.Mr J R Caveen

First of all we have to understand that 65 B IEA Certificate is not for Computer output but for Human doing of the things mentioned in 65 B(4)(a) & (b) i.e. Human witnessing any information contained in an Electronic Record produced by computer. Hence 65 B IEA Certificate is for the Electronic Records produced by a computer.

Electronic Record meant for Documentary evidences are said in section 65 B (4) (a) IEA.

Similarly Electronic Record meant for oral evidences are said in 65 B (4) (b) IEA

In any proceedings where it is desired to give statement in evidence by virtue of this section a certificate doing any of the following things that is to say-

(a) Identifying the electronic record containing the statement and describing the manner in which it was produced

(b) Giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer

If you have not done any of the things mentioned in section 65 B (4) (a) & (b) of IEA for the (Hard Copies) printouts of any information in your possession, does not require 65 B IEA Certificates. Hence Air Tickets, Train Tickets, Movie Tickets, Medical Bills, and 161(3) CrPC Statements recorded by Police etc. do not require 65 B IEA Certificates.

Certificate is not for certifying the contents.

Q-8.It seems this section needs a lot of interpretations in view of the individuals/advocates/Judges, this itself indicated that the section should be redefined in a simple way. Qr. Mr. K.Manivannan. Scientific Assistant.

Digital communication is new to all. Majority of us are in in the level of LKG. We need not to feel shy to accept or exhibit our ignorance. Physical Laws to suit the human activities in the earth were enacted by the law makers, by experiencing all sorts of the situations in the physical world. But Cyber laws which is applicable globally were enacted mostly cut and paste without taking into practical aspects. Cut and paste is not wrong since digital is a global language. However while doing the cut and paste the law makers should have given an explanation by telling imaginary situations. 65 B IEA is just like Riddle and challenging the readers "If possible try to understand"

I used to mention often the story of six blind men and the Elephant for understanding the cybercrime. Six blind men meet an elephant for the first time and each man touches a different part of the elephant and makes predictions about what the elephant is like. No one described the Elephant fully. However it is not their fault. Similarly the law drafters should have described the law through imaginary situations. i.e. Persons involved in the drafting of Cyber laws. Even now it can be done.

Q- 9. At what stage the certificate has to be given? During Charge sheet or while tendering the evidence? Qr. Mr.Parthiban Mahenderan

Humans identifying the digital baby in a computer and making it (computer Output) delivered by cesarean (printing/copying in Digital storage Media). Certificate has to be prepared at the time of delivery. Normally it has to be filed along with the Final Report/Charge sheet. But can be filed at any time before or during the chief Examination of the Investigating Officer (last witness in Prosecution) also by giving a copy to the accused with the permission of the court.

In this connection I would like to share my experiences as a former Police officer experienced during the year 1977. While taking the final reports related to road accident cases, the Magistrate used to refuse to take up the photos without negatives.

Then the Police will produce the negatives. Then only the court will assign CC Number. Here the court also took the responsibility in getting the negatives. Similarly if the court adapted the same procedures while assigning CC Numbers for cybercrime cases the police Officers would have filed 65 B Certificates without fail.

Q -10. Just we can assume, if this zoom meeting should be made it as electronic evidence, who will give a certificate, whether Zoom service provider? Or the authority of Cyber society? Qr. Mr. K.Manivannan. Scientific Assistant.

Humans, who witnessed the Digital Baby in a computer need not to prepare 65 B Certificate unless he /she printed/Copied, desiring to give a statement in Evidence (65 B (4) IEA) has to issue a certificate. He may be a participant or host or Service provider.

Q- 11. Can a person can self-certify when she/he is producing a document of phone recording with the transcript that it was received in their smartphone and that is always in their possession?. Qr. Mr.Parthiban Mahendran

Yes. When you are sensing anything through your 5 senses, you only give oral evidence in the court. Similarly here you only heard, recorded, done transcript in the devices possessed by you, certainly you can certify. This is applicable in cases of receiving email etc.

Q - 12. Whoever is giving medical or some Certificate they can give their digital signature (encrypted document).Nobody can hack it.

Yes.

Q- 13. A print out from LinkedIn regarding profession and salary of an individual, should a certificate be given by the person taking printout or, from the LinkedIn office?

Yes. Person taking the printout

Q- 14. What is the necessity of electronic or digital signatures?

Yes,for authentication of an electronic document.

Q-15.If the CCTV footage is in the custody of the accused... if he wants to produce the electronic evidence... who should produce the certificate?

Such situation will come mostly in crime cases and in that scenario Police will seize the CCTV footage and get certificate through CCTV Technicians who installed such system.

Q- 16. We are giving Footage as an evidence for any crime occurs...

Yes... should be given with a Section 65B IEA certificate.

Q -17. Is 65(B) IEA certificate mandatory for the records received from Facebook through email?

Yes By the person who saw such records In a computer.

Q- 18. All form of evidence is verified and cloned or duplicated prior to investigation to ensure the integrity of the evidence. Computer Forensic evidence plays a crucial role in the threat management life cycle, from the incidence response to high stake corporate litigation.

It is the Procedures followed in Digital Forensics Lab

Q - 19. India Post established electronic post for quick and fast transmission. It is also come under the electronic evidence. Here the document transmits from one terminal to other terminals by way of sending by the sender and the receiver receives the same.

YES.

Q-20 .Admissibility of Electronic Records -65 A & 65 B IEA-(Introduced in 2000) Related case laws. Qr.Ms Geetha

1. State (N.C.T. of Delhi) v. Navjot Sandhu @ Afsan Guru[1] (2005
2. Anvar P.V vs P.K.Basheer & Ors on 18 September, 2014
3. Sharadendu Tiwari vs Ajay Arjun Singh on 17 January, 2017
4. Sonu @ Amar vs State Of Haryana on 18 July, 2017
5. Shafhi Mohammad vs The State Of Himachal Pradesh on 30 January, 2018
6. Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal on 26 July, 2019

Q-21.Whether it is mandatory to produce the hard disc of CCTV?

First of all we have to understand that there is no original evidence in the Digital evidence. DVR Computer of CCTV contains a lot of information not related in the case. Police has to seize only the relevant information pertaining in the case in a CD for the purpose of producing in the court along with 65 B IEA Certificate. Seizing the hard disc is violations of personal privacy. Supreme Court of India Upholds Right to Privacy as a Fundamental Right. Besides if the police handover the hard disk then the Magistrate has to search the hard disk for seeing the relevant video file. Only in the deserving cases where file deletion etc., reported, the hard disk may be seized by following all formalities.

There is no mandatory to seize and produce the hard disk.

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