

Cyber Pornography & the IT Act

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2. Cyber Pornography

There is no settled definition of pornography or obscenity. What is considered simply sexually explicit but not obscene in USA may well be considered obscene in India. There have been many attempts to limit the availability of pornographic content on the Internet by governments and law enforcement bodies all around the world but with little effect.

Pornography on the Internet is available in different formats. These range from pictures and short animated movies, to sound files and stories. The Internet also makes it possible to discuss sex, see live sex acts, and arrange sexual activities from computer screens. Although the Indian Constitution guarantees the fundamental right of freedom of speech and expression, it has been held that a law against obscenity is constitutional. The Supreme Court has defined obscene as “offensive to modesty or decency; lewd, filthy, repulsive.

Section 67 of the IT Act is the most serious Indian law penalizing cyber pornography. Other Indian laws that deal with pornography include the **Indecent Representation of Women (Prohibition) Act** and the **Indian Penal Code**.

According to Section 67 of the IT Act

Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.

This section explains what is considered to be obscene and also lists the acts in relation to such obscenity that are illegal.

What constitutes obscenity in electronic form?

To understand what constitutes obscenity in the electronic form, let us analyse the relevant terms:

Any material in the context of this section would include video files, audio files, text files, images, animations etc. These may be stored on CDs, websites, computers, cell phones etc.

Lascivious is something that tends to excite lust.

Appeals to, in this context, means “arouses interest”.

Prurient interest is characterized by lustful thoughts.

Effect means to produce or cause some change or event.

Tend to deprave and corrupt in the context of this section means “to lead someone to become morally bad”.

Persons here refers to natural persons (men, women, children) and not artificial persons (such as companies, societies etc).

Having understood these terms, let us analyse what constitutes obscenity. To be considered obscene for the purpose of this section, the matter must satisfy at least one of the following conditions:

1. it must tend to excite lust, or
2. it must arouse interest in lustful thoughts, or
3. it must cause a person to become morally bad.

The above conditions must be satisfied in respect of a person who is the likely target of the material. This can be understood from the following illustration:

Illustration

Sameer launches a website that contains information on sex education. The website is targeted at higher secondary school students. Pooja is one such student who is browsing the said website. Her illiterate young maid servant happens to see some explicit photographs on the website and is filled with lustful thoughts.

This website would not be considered obscene. This is because it is most likely to be seen by educated youngsters who appreciate the knowledge sought to be imparted through the photographs. It is under very rare circumstances that an illiterate person would see these explicit images.

Acts that are punishable in respect of obscenity

To understand the acts that are punishable in respect of obscenity in the electronic form, let us analyse the relevant terms.





Publishes means “to make known to others”. It is essential that at least one natural person (man, woman or child) becomes aware or understands the information that is published. Simply putting up a website that is never visited by any person does not amount to publishing.

Illustration

Sameer has just hosted a website containing his articles written in English. Sameer has not published the articles.

An automated software released by an Internet search engine indexes Sameer’s website. Sameer has still not published the articles.

A Chinese man, who does not understand a word of English, accidentally visits Sameer’s website. Sameer has still not published the articles.

Pooja, who understands English, visits Sameer’s website and reads some of his articles. Now, Sameer has published his articles.

Transmits means to pass along, convey or spread. It is not necessary that the “transmitter” actually understands the information being transmitted.

Illustration

Sameer has just hosted a website containing his articles. Pooja uses an Internet connection provided by Noodle Ltd to visit Sameer’s website. Noodle Ltd has transmitted Sameer’s articles to Pooja. However, Noodle employees are not actually aware of the information being transmitted by their computers.

Causes to be published means “to bring about the publishing of something”. It is essential that the actual publishing must take place.

Illustration

Sameer has just hosted a website containing his articles. An automated software released by Noodle Internet search engine indexes Sameer’s website. But no human being has still used that index to read these articles. Noodle has not caused Sameer’s articles to be published.

Based upon the index created by Noodle, Pooja reaches Sameer's website and reads some of his articles. Now, Noodle has caused Sameer's articles to be published.



Information **in the electronic form** includes websites, songs on a CD, movies on a DVD, jokes on a cell phone, photo sent as an email attachment etc.

The **punishment** provided under this section is as under:

1. First offence: Simple or rigorous imprisonment up to **5 years** and fine up to **Rs 1 lakh**.
2. Subsequent offence: Simple or rigorous imprisonment up to **10 years** and fine up to **Rs 2 lakh**.



Publishing cyber pornography (Summary)

Actions covered	Publishing, causing to be published and transmitting cyber pornography.
Penalty	<p><u>First offence:</u> Simple or rigorous imprisonment up to 5 years and fine up to Rs 1 lakh</p> <p><u>Subsequent offence:</u> Simple or rigorous imprisonment up to 10 years and fine up to Rs 2 lakh</p>
Relevant authority	Court of Session
Appeal lies to	High Court
Investigation Authorities	<ol style="list-style-type: none"> 1. Controller of Certifying Authorities (CCA) 2. Person authorised by CCA 3. Police Officer not below the rank of Deputy Superintendent
Points to mention in complaint	<ol style="list-style-type: none"> 1. Complainant details 2. Suspect details 3. How and when the contravention was discovered and by whom 4. Other relevant information



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