

Section 67: Punishment for publishing or transmitting obscene material in electronic form

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 two three years and with fine which may extend to five lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.

This section is parallel to 292 IPC, the difference is that under section 292 pornography is in books, pamphlets, posters etc where as under section 67 the obscenity is in electronic form, and that shall be published or transmitted in electronic form. Therefore this section is applicable to the pornographic websites, and also for acts of sending, transmitting or circulation of obscene e-mails.



Section 67 A: Punishment for publishing or transmitting of material containing sexually explicit act, etc. in electronic form

Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct 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 ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.

Exception: This section and section 67 does not extend to any book, pamphlet, paper, writing, drawing, painting, representation or figure in electronic form-

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art, or learning or other objects of general concern; or

(ii) which is kept or used bona fide for religious purposes.

Therefore it is clear that section 67 and 67 –A prohibits pornography in electronic form. The main difference between these sections is, 67 prohibits pornography in the form of text, images or picture etc in electronic form whereas 67 – A is related to pornography in videos in electronic form and their circulation.

It shall also be born in mind these sections do not apply to any contents in any form if such contents has scientific, literary, artistic value or that has bona fide use for religious purposes.



Section 67- B: Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form.

Whoever,-

(a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct or

(b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner or

(c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource or

(d) facilitates abusing children online or

(e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with a fine which may extend to ten lakh rupees and in the

event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees:

Explanation: For the purposes of this section, "children" means a person who has not completed the age of 18 years.

Section 67 – B IT Act is a section that prohibits child pornography. As per the ingredients incorporated in section 67 – B IT Act it is clear that browsing, watching, downloading pornography with regard to children is an offence. Thus, as provided in the section browsing, watching pornography within the confines of four walls which can be in one's bedroom, cyber café and whatever is an offence. Therefore this section provides a great protection to children and prohibits child pornography.

Sections 67, 67-A and 67-B -Standard Operating Procedure (SOP):-

All the three sections 67, 67-A and 67-B IT Act are related pornography. Hence the operating procedure is as follows.

- The existence of the alleged pornography shall be established. For this purpose the web pages where such content appeared shall be secured towards documentary proof to establish that such content has in fact existed.

If the circulation of pornography is through e-mails, such emails shall be collected towards documentary proofs to establish that such emails were in fact transmitted or circulated.

This collection may be by taking such web pages or e-mails as prints before mediators under a cover of mediators report.

Depending on the circumstances of the case nay other witnesses who have seen the alleged web contents or received the alleged e-mail may also be examined and their statements may be recorded.

- The web contents or e-mails shall be traced by securing the IP Address (IP Data Records) tracks that are associated with the web pages where the alleged web contents are posted or e-mail IDs through which the alleged content is transmitted or circulated.

The IP Address (IP Data Records) tracks may be collected from the concerned service providers which may be social networking service provider like www.facebook.com or e-mail service provider like www.gamil.com.

- After getting IP Data Records, the IP Addresses may be searched for lookup on websites like www.apnic.net, www.domaintools.com, www.whois.net etc the IP Address assignee which can be usually an Internet Service Provider (ISP) information may be ascertained.
- In the next step by writing or by sending an email request to the ISP the end user details of the IP Addresses may be collected and thereby the name and address of the person who created web pages where the alleged web contents are posted or e-mail IDs through which the alleged contents were transmitted or circulated, is known.
- Thus when the suspect is identified and he may be questioned and if he admits, his confession may be recorded before mediators, and in pursuance of such confession and the instance of the culprit the tool of offence which could be a computer, laptop or mobile phone that was used for committing the offence may be recovered.

- The recovered tool of offence (computer, laptop or mobile) may be forwarded to the Forensic Science Laboratory (FSL) under a Letter of Advice with a proper relevant questionnaire and a analysis report may be obtained.

Thus the case may be established with proper documentary (electronic), oral, circumstantial, scientific evidences.
