



## **E-TUTORIAL NO.13&14**

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## **OFFENCES**

The act enumerates the various acts which constitute an offence in chapter XI of the Act it also provides for punishment which may be either imprisonment or fine or both. The section speaks of legislative measures to control the use of computer and internet for the acts that results in monetary loss or the loss of data and records and also Sending offensive messages through communication service. It also cover the offences which are punishable under Indian penal code but there qualitative impact is more when the acts are committed using computer. The following offences have been laid down:

**Tampering, destroying or altering with the computer source document** -Section 65 deals with intentional and knowingly tampering i.e. concealing, destroying or altering with the computer source document and provides for imprisonment for three years or fine of two lakhs rupees or both.

**Computer related offences-** Section 66 deals with Computer related offences and provides that if any person, dishonestly or fraudulently, does any act referred to in section 43, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both.

- **Sending offensive messages through communication service, etc** (Section 66A).- Any person who sends, by means of a computer resource or a communication device,-(a) any information that is grossly offensive or has menacing character; or
- (b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device; or
- (c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages,

Punishment in such cases will be imprisonment for a term which may extend to three years and with fine.

The terms "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device

including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message (Explanation to this section)

- **Dishonestly receiving stolen computer resource or communication device** (Section 66B)- Whoever dishonestly receives or retains any stolen computer resource or communication device knowing or having reason to believe the same to be stolen computer resource or communication device, shall be punished with imprisonment of either description for a term which may extend to three years or with fine which may extend to rupees one lakh or with both.
- **Identity theft** (sec 66C).- Whoever, fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to rupees one lakh.
- **Cheating by personating by using computer resource** (Section 66D). - Whoever, by means of any communication device or computer resource cheats by personation, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees.
- **Violation of privacy** (Section 66E.)-- Whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or with both.
- Here the words
  - (a) "*Transmit*" means to electronically send a visual image with the intent that it be viewed by a person or persons; (b) "*capture*", with respect to an image, means to videotape, photograph, film or record by any means;
  - (c) "*Private area*" means the naked or undergarment clad genitals, public area, buttocks or female breast;
  - (d) "*Publishes*" means reproduction in the printed or electronic form and making it available for public;
  - (e) "*Under circumstances violating privacy*" means circumstances in which a person can have a reasonable expectation that--

(i) He or she could disrobe in privacy, without being concerned that an image of his private area was being captured; or

(ii) Any part of his or her private area would not be visible to the public, regardless of whether that person is in a public or private place.[explanation to section ]

• **Cyber terrorism-** Section 66F subsection 1 provides that whosoever

(A) With intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people by--

(i) Denying or cause the denial of access to any person authorised to access computer resource; or

(ii) Attempting to penetrate or access a computer resource without authorisation or exceeding authorised access; or

(iii) Introducing or causing to introduce any computer contaminant,

and by means of such conduct causes or is likely to cause death or injuries to persons or damage to or destruction of property or disrupts or knowing that it is likely to cause damage or disruption of supplies or services essential to the life of the community or adversely affect the critical information infrastructure specified under section 70; or

(B) knowingly or intentionally penetrates or accesses a computer resource without authorisation or exceeding authorised access, and by means of such conduct obtains access to information, data or computer database that is restricted for reasons of the security of the State or foreign relations; or any restricted information, data or computer database, with reasons to believe that such information, data or computer database so obtained may be used to cause or likely to cause injury to the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence, or to the advantage of any foreign nation, group of individuals or otherwise, commits the offence of cyber terrorism.

• **Commits or conspires to commit cyber terrorism** (s. 66 (2))- Whoever commits or conspires to commit cyber terrorism shall be punishable with imprisonment which may extend to imprisonment for life.

• **Publishing or transmitting obscene material in electronic form** (Section 67).-- Whoever publishes or transmits or causes to be published or transmitted 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 three years and with fine which may extend to five lakh rupees and in the event of 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.

Section 67A provides 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.

• **Child pornography** - 67B provides for Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form – section states that 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 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:

Provided that provisions of section 67, section 67A and this section 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 for bona fide heritage or religious purposes.

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

- **Failure of intermediaries to preserve and retain s information-** section 67C deals with preservation and retention of information by intermediaries.- it cast duties on Intermediary to preserve and retain such information as may be specified for such duration and in such manner and format as the Central Government may prescribe (sub section 1) further any intermediary who intentionally or knowingly contravenes the provisions of sub-section (1) shall be punished with an imprisonment for a term which may extend to three years and shall also be liable to fine.(sub section 2).
- **Failure to comply with any order of controller-** Section 68(2) provides that any person who intentionally or knowingly fails to comply with any order of controller under section 68 (1) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding two years or a fine not exceeding one lakh rupees or with both.
- **Disclosure of information in breach of lawful contract,-**Section 72 A has been introduced to provide punishment for disclosure of information in breach of lawful contract, the person liable, shall be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five lakh rupees, or with both
- **Offences by companies** -Section 85 deals with offences by companies. It provides that such persons who, at the time the contravention was committed, was in charge of, and was responsible, to, the company for the conduct of business of the company as well as the company, will be, under sub-section (1) of section 85 of the Act will be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. However, if such person proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, he shall not be liable to punishment. Sub-section (2) of section 85 also deems a director, manager, secretary or any other office of the company to be guilty of contravention and liable for punishment if it is proved that the contravention has taken place with the consent or connivance of, or is attributable

to any neglect on the part of such person. 'Company', for the purpose of this section, has been explained to mean any body corporate and includes a firm or other association of individuals. 'Director', in relation to a firm, would mean a partner in the firm.

**Investigation of offences:** Section 78 of the Act gives the powers of investigation to a police officer not below the rank of Inspector. Section 80 confers the powers to police officers and other officers of central and state government to enter and search premises.

## E-tutorial No:14

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## INTERMEDIARIES NOT TO BE LIABLE IN CERTAIN CASES

(CHAPTER XII):

Section 79 deals with Exemption from liability of intermediary in certain cases.—the subsection 1 provides that notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him. However the provisions of sub-section (1) shall apply in following cases i.e . **Intermediaries are not liable if :**

(a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or

(b) the intermediary does not(i) initiate the transmission,(ii) select the receiver of the transmission, and(iii) select or modify the information contained in the transmission;

(c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.(subsection 2)

But the provisions of sub-section (1) shall not apply in following cases. i.e

### **Intermediaries are liable if:**

(a) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act;

(b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a

computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.(subsection 3 of sec79)

The expression "third party information" means any information dealt with by an intermediary in his capacity as an intermediary (see Explanation to sec).

There are various internet service providers (ISPs) that provides for internet access the links to the subscriber are provided through dial up services by use of modem and phone call to the ISPs; through leased lines which are dedicated lines directly from ISPs to the subscriber or through ISDN, the reliable and fast medium of bringing data, voice and video together on one digital line. To avoid there liability for many offences the web site owners and other intermediaries must take care to control as far as possible the information published on the website, must adhere to law of the land, should take adequate control measures to detect and eliminate fraud ,to prevent unauthorised access to the resources of internet services.