



Cyberbullying in Nigeria: Examining the Adequacy of Legal Responses

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Abstract

Cyberbullying has been defined as the “process of using the internet, cell phones or other devices to send or post text or images intended to hurt or embarrass another person.” The word “cyberbullying” is often used interchangeably with “cyber stalking” and in fact the Cybercrimes (Prohibition, Prevention, etc.) Act 2015 of Nigeria, uses the word “cyber stalking” which it defines as any course of conduct directed at a specific person that would cause a reasonable person to feel fear. By the provisions of the Act, the transmission of any communication through the means of a computer to bully, threaten or harass another person where such communication places another person in fear of death, violence or bodily harm amounts to cyber stalking. Cyberbullying is becoming a common phenomenon in Nigeria as more people engage in it especially on social media platforms. This is carried out in various ways and a common trend is posting indecent imagery of persons online such as naked pictures or videos of persons in order to humiliate them. When posted by a person, the communication is shared by others thereby causing circulation on social media. This act amounts to cyber stalking where the intention consists of those elements stated under the Cybercrimes Act. In other situations where it is shared without the aim of humiliating the victim, such act can still be incriminated under some other laws in Nigeria such as the Criminal Code Act and the Penal Code Act which for instance both criminalise obscene publications. It is worthy of note there have been reported cases where victims of cyberbullying have committed suicide as a result of fear or shame. A major observation is that cyberbullying has gained normalcy and many internet users engaged in it do not seem to be aware of the criminal connotation of their actions. This paper examines the effectiveness of legal responses to cyberbullying in Nigeria. It discusses the forms of cyberbullying commonly perpetrated in Nigeria by citing some real life instances that have happened in the past. The paper notes that most forms of cyberbullying can be prosecuted under the Cybercrimes Act, however, there has not been any notable enforcement of the law in terms of prosecution of cyberbullying cases. It appears that the lack of prosecution of offenders has fostered the act of cyberbullying especially under the present circumstances where there is widespread ignorance among internet users. The paper also notes that

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the absence of image rights is a precursor in many respects to some forms of cyberbullying especially when photographs and videos of victims are involved. The paper advocates the implementation and enforcement of the Cybercrimes Act as well as other laws relating to cyberbullying in Nigeria. The paper also posits that the protection of image rights will go a long way to assist in curbing the act of cyberbullying in Nigeria.

Keywords Cyberbullying · Nigeria · Internet · Legal response · Grossly offensive · Cybercrime · Social engineering · Data protection · Image rights

1 Introduction

Cyberbullying is one of the negative effects of technological advancement and it occurs on online sites especially on social media platforms. It is a way by which the internet is adversely used due to the little or no inhibition on online platforms. The speed as well as the rate at which victims can be reached by perpetrators, coupled with the damaging effects of cyberbullying have made it necessary that the act be curtailed. The law remains a practical way by which the menace of cyberbullying can be curbed and Nigeria has taken legal measures as regards this through the Cybercrime (Prohibition, Prevention, etc.) Act 2015. There are also extant laws that criminalize some common forms of cyberbullying in Nigeria, as well as laws pursuant to which civil claims can be made.

This paper examines the legal response to cyberbullying in Nigeria and its adequacy in terms of effectiveness. The paper in order to amply project the situation first discusses the various forms of cyberbullying commonly perpetrated in Nigeria by exploring its recent occurrences. Among others, the paper highlights the use of imagery as a tool used by perpetrators to cyberbully in Nigeria. The paper thereafter examines the legal response by discussing the laws impacting on cyberbullying in Nigeria. The adequacy of legal response is subsequently examined through an analysis of some requisites such as socio-cultural factors which must be put into consideration in the enactment of laws to address the issue of cyberbullying.

2 Elements of Cyberbullying

The existing literature on cyberbullying shows varying parameters within which the concept can be situated. Opinions vary on whether cyberbullying only applies to children and some literature suggest that when adults are bullied in similar situations, the act is called cyber harassment or cyber stalking [4, p. 113]. There may also be difficulty in identifying the point at which an action or communication amounts to cyberbullying because such action or communication may just be an expression of anger or annoyance [56, p. 44]. Another issue is whether there is a class of acts that amount to cyberbullying on their own, or any act can amount to cyberbullying

depending on the effect such act has on the victim. It is therefore necessary to conceptualise cyberbullying for the purpose of this paper.

In conceptualising cyberbullying, the elements of cyberbullying need to be identified. These elements can be gleaned from the definition of cyberbullying itself. Since cyberbullying was coined from the word “bullying”, an inquiry into what bullying connotes is apt for this purpose. According to Langos, bullying is a specific type of aggressive behaviour that is intended to cause harm, through repeated actions carried out over time, targeted at an individual who is not in a position to defend himself or herself [36, p. 285]. Cyberbullying is thus the act of bullying with the use of electronic forms of contact. It is defined as “an aggressive, intentional act or behaviour that is carried out by a group or an individual, using electronic forms of contact, repeatedly and over time against a victim who cannot easily defend him or herself” [43, p. 500].

The elements of cyberbullying as elucidated by Langos are repetition, imbalance of power, aggression, and intention [36, p. 285]. For the element of repetition to be present, the act must take place over a period of time, that is, not just once [36, p. 286]. This element is present once a communication is posted on the internet as it can go viral and be viewed by a large number of people who can save it on electronic devices. Imbalance of power as cyberbullying has to do with when there is anonymity, technological expertise or the availability of a large audience [36, p. 286]. Even if a perpetrator does not have any technological expertise or does not make himself or herself anonymous, the magnitude of audience the internet brings about will be sufficient. The element of intention and aggression connote that the perpetrator must aim at causing harm to the victim [36, p. 287]. This distinguishes cyberbullying from other acts where no harm is intended, such as words expressed in anger or annoyance which is not intended to cause harm [36, p. 288].

3 Cyberbullying in Nigeria

Cyberbullying happens in Nigeria as it is with any other country. It is however difficult to express the situation in Nigeria with accurate data as most of the cases of cyber bullying in Nigeria are not reported in cases where it is done outside the confines of a close environment for instance, a school. Such environments often have a system of reporting which victims can easily make use of. Although there is a dearth of decided cases by the courts in Nigeria on cyberbullying, its occurrence is not in any way negated as reliance can be placed on other sources such as empirical research for its prevalence in Nigeria. A research carried out at a university revealed that approximately 50% of the students have been victims of one form of cyberbully or the other [35, p. 54].

As cyberbullying is tied to the use of computer devices and the internet, an increase in access to online communication escalates cyberbullying [12]. Cyberbullying is becoming more prevalent in Nigeria with the increasing use of computer and the internet. The introduction of GSM in the telecommunication industry in 2001 [9, p. 99] coupled with the evolution of digital mobile phones made access to people and dissemination of information easier. This also paved a way for a regime

of bullying on communication platforms particularly on social media where there is no inhibition. It has been rightly noted that “the ‘social media disinhibition phenomenon’ is the mind-set behind cyberbullying.” [48, p. 5]. Reports indicate that by 2019, there were 98.39 million internet users in Nigeria out of which 54% access the internet on a daily basis, and 12% (24 million) have active social media accounts [32, p. 20]. Reports also show that the most used social platform in Nigeria is WhatsApp with 85% of internet users, this is followed by Facebook which recorded 78%, then Instagram with 57%, Facebook Messenger with 54%, YouTube with 53% and Twitter with 38% [32, p. 29]. With the huge use of the internet and social media platforms, cyberbullying has become a common phenomenon and many users have either cyberbullied, have been victims or have witnessed cyberbullying.

While social media platforms were at a time utilised mostly by younger adults, there is now a rising growth in the use of social media by older adults. A study carried out in Nigeria showed that 60% of the older adults sampled visit social media sites regularly and one in every seven spend at least 1–2 h on visits to social media sites [57, p. 155]. The more time spent on social media sites, the higher the likelihood of being a victim of cyberbullying, a perpetrator, or witnessing the act.

3.1 Common Forms of Cyberbullying in Nigeria

The forms of cyberbullying have been identified to include outing and trickery; exclusion, cyber stalking [56, p. 46], flaming, impersonation, and trolling [48, p. 5]. There is no reliable data to know the most common form of cyberbullying in Nigeria as there is not really empirical research on the subject matter for the country as a whole. Existing literature mostly concentrate on specific geographical areas such as a town [5]; focus groups like students generally [2] or in a specific field [27]; or particular age groups like children. While there is no doubt that cyberbullying takes place in Nigeria in all its forms, the forms that have become prevalent on social media in recent times are outing; trickery; trolling; and roasting.

3.1.1 Outing

Outing involves sharing someone’s secret, embarrassing information or personal data with others without the owner’s permission and for malicious purposes [71]. This form of cyberbullying is common in Nigeria and it is mostly carried out through the use of imagery and videos. In December 2018, a video of a lady named Tobi Davies in bed with a popular Nigerian musician by name Peruzzi went viral on the internet [8]. The video was actually recorded by the lady herself but apparently got into the wrong hands and was shared online. The lady had reportedly sent the recorded video to her close friends to prove to them that she had an intimate affair with the musician and the video was later leaked by one of those friends after a fall-out with the lady [65]. There was a huge backlash from the public as the video was continuously shared by internet users across various social media sites. The hostile response by the public was generally because the lady did the recording herself and

it was wondered why she could do such. The lady as a result became suicidal and went missing for a period of time [7].

In some other cases, embarrassing pictures or video of victims will be made by perpetrators and posted online to shame the victim. This is mostly in cases where the victim has allegedly committed a “social wrong”. An illustration of this was an incident that happened in March 2019 in Anawbia in Anambra State of Nigeria. A woman named Ogochukwu was attacked and stripped naked by another woman named Tochukwu Azota. The victim had been invited over by the husband of the perpetrator who happened to be a friend of the victim on Facebook. The victim accepted the invitation and proceeded to the man’s matrimonial home where the wife of the man locked up both the man and the victim in the house and went to mobilise her friends to beat up the victim. The victim was stripped naked and badly beaten [59]. A video showing the woman naked and being beaten was recorded and was circulated across social media platforms to shame the victim. Arrests were made after the video was circulated online and the wife of the man, her relative and the man himself were arrested by the police after the victim claimed that the man watched while she was being tortured but did nothing to save her. The victim later on declared that her career has been killed both in Nigeria and outside the country as a result of the nude video that went viral [62].

There have been many occasions where persons caught in the act of stealing are stripped naked, videos and pictures of them taken, and circulated across social media in order to shame them. In April 2019, an unidentified woman was beaten, stripped naked and made to walk the streets of Ikeja, Lagos State having stolen 3 pieces of iPhone and then sold the phones at ridiculous prices [11]. People were seen taking photographs and recording the naked woman with their phones and the photographs and videos were later shared on social media platforms to shame the woman. It needs to be mentioned that jungle justice is a common practice in Nigeria and a suspect of a crime or moral wrong risks being attacked by a mob if the police or other law enforcement officers tarry in their arrival. A usual action is for the suspect to be stripped naked and paraded before the final mob sentence is passed in which the criminals caught in the act are set ablaze in some cases. While this is considered a crime and has been dealt with as such, the advent of the computer, internet and social media gives a new dimension to the practice. People now use electronic means to record such events and then circulate it online or on social media platforms for the purpose of calling the attention of the public to the disgraceful act of the suspect and shaming him or her.

3.1.2 Trickery

Trickery is when the victim is tricked into disclosing personal information that the cyberbully intends to share with others or use as a threat. Trickery is mostly perpetrated by friends or close associates of the victim with whom the victim had shared personal information. A common way of trickery in Nigeria is the leaking of sex tapes or nude pictures as revenge porn. In October 2016, a video of a lady by name Chidinma Okeke who just won a beauty pageant; Miss Anambra, was circulated across social media platforms. In the video, she was seen having sexual intercourse

with another lady [17]. Chidinma later claimed that she was coerced into making the sex video by the organisers of the beauty pageant who claimed she had to do it before she could be declared a winner. Reports gathered also indicated that she was made to do those acts and the video was recorded with the aim of blackmailing her with it at a later time. She claimed that “she became a slave to them” after the video was recorded [34]. This was however debunked by the organisers who claimed they had nothing to do with the video. The leaked video generated a lot of controversy as the public berated the lady for engaging in such act. It needs to be mentioned here that same sex relationship is criminalised in Nigeria [60, S.42(1)]. Although there were no insinuations on criminal charges pressed against the lady, lesbianism is an act generally frowned at on moral grounds in Nigeria. Thus, there was a public outrage against the lady coupled with the fact that she was a beauty queen. The lady was dethroned following the scandal and she reportedly became suicidal, although she later denied this [34].

Another incident happened in November 2019 with the online circulation of a video of a young man and a lady having sexual intercourse [25]. It was reported that both of them were in a romantic relationship and the video was recorded at the instance of the man as a reminder of their good times together. The young man shared the video with his close friends and one of the friends later leaked the video online as revenge after being wronged by the young man. The events following the video leak were catastrophic as the lady was a student of Babcock University; a religious institution which has rules and regulations on morals. There was condemnation of the act by the public as the video was massively shared from one social media platform to the other and to personal electronic devices. The lady involved was made fun of and some memes were generated out of the incident. The video was also posted on some pornographic sites [25, 44]. It was revealed that the young man was a student of the University but had earlier on been expelled and he had subsequently been admitted into a mental rehabilitation facility. The incident took place at the rehabilitation facility where the lady had gone to visit him. The University conducted investigations into the matter and the lady was eventually expelled from the University [22]. An interesting development was that many of the internet users who had earlier shamed the two persons in the video later criticised the school for expelling the lady involved.

3.1.3 Trolling and Roasting

Trolling is defined as “the practice of behaving in a destructive or disruptive manner in a social setting on the internet with no apparent instrumental purpose.” [13]. It has also been defined as the art of deliberately, cleverly, and secretly pissing people off” [40, p. 1802]. Roasting occurs when there is a convergence of attacks from different people on a single victim to cause humiliation [48, p. 6]. These two involve creating controversy with the aim of causing discord and starting quarrels. These two are common and prevalent forms of cyberbullying on online communities perhaps because there is a thin line between them and harmless comments in most cases. Trolling and roasting may start as mere harmless comments for fun and indeed a research revealed that trolling is a form of enjoyment for most people that

engage in it [13]. The acts however can have devastating effects on victims. Such is the case of a young man in Nigeria by name Michael Asiwaju who committed suicide as a result of being trolled and roasted online. The man was accused of rape on Twitter by some ladies. Rape being a sensitive issue, coupled with the silence that has always surrounded it prompted the Nigeria Twitter community to applaud those women and Asiwaju became a victim of trolling and roasting by a number of Twitter users.

More women who claimed to have been his victim one time or the other joined in the accusation as the trolling and roasting intensified. In his defence, Asiwaju tweeted under his Twitter account “@Asiwaju_limited” that he indeed had consensual sex with some of the women in question and it was not in any way a rape incident. In his words. “You all claimed I raped [you]? We met on social media, I took [y]ou to club, I spent 500 k popping Champaign [because] of [y]ou and we had sex when [I was] high and you call it rape? 2017 You didn’t report to police? 2018 You didn’t report to police, 2019 [y]ou decided to blackmail me” [67]. His tweet questioned why the women would accuse him of rape when in fact he took them to a nightclub after meeting on social media and spent five hundred thousand (500,000) naira on champagne and they had sex afterwards. He also questioned why the supposed victims of rape did not make any report to the police since 2017 but decided to blackmail him with it in 2019.

The Twitter saga became dirty as Asiwaju in trying to prove his innocence released nude pictures of some women which he claimed were sent to him by those women. He claimed those pictures belonged to those women accusing him and queried why they sent those pictures if not that they already demanded for sexual relations with him. His side of the story was not believed by majority of Twitter users, at least not publicly. This is attributable anyway to the sensitive nature of the issue and no one wanted to be seen as enabling rape. Tweets on the issue contained negative comments fuelled by rage with some persons saying that he was lying. Asiwaju later tweeted that his mother who just had a heart surgery saw the post about him and died as a result. In order to dispel his defence, Twitter users dug up more information about him and disclosed that Asiwaju had been arrested prior to the incident for blackmail and rape and also that his mum had long died before the incident [18]. According to a Twitter user, “Mr. Dare Michael Asiwaju has been arrested for Rape before. He even made the news” [6, 38].

Asiwaju became suicidal after he alleged that his mother died. In a tweet, he asked what those women who accused him of rape had gained from the blackmail and stated that his mother died as a result of the accusation and that he could also die because he was no longer himself [66]. He tried in a series of tweets to convince the public that he was innocent and thereafter in a tweet which would be his last, he stated “Goodbye I’ll die soon. Am gone” [68]. The tweet was not taken seriously by Twitter users and they turned it into a joke with some asking for his material possessions. Hours later, a statement was released by the police that a man identified as Asiwaju was found dead in a hotel and evidence showed that he took two bottles of Sniper—a popular rat poison in Nigeria [47]. It was after the death reports that Twitter users became remorseful and realised that Asiwaju was indeed being trolled and roasted on the platform.

4 Legal Response

As it is in many jurisdictions, attempts have been made in Nigeria by way of legislation, to curb the negative effects of the use of computer and the internet. Although there is no standalone law on cyberbullying in Nigeria, some aspects of cyberbullying amount to offence under the criminal laws in Nigeria. Cyberbullying is expressly criminalised by the Cybercrime (Prohibition, Prevention, etc.) Act 2015 (Cybercrime Act), and some of the elements of cyberbullying or modes used in carrying it out, are also criminalised in the Criminal Code Act and Penal Code Act. There are also other laws pursuant to which civil actions can be taken on some aspects of cyberbullying. The legal provisions shall now be examined.

4.1 Cybercrime (Prohibition, Prevention, etc.) Act 2015 (Cybercrime Act)

Section 24(a) of the Cybercrimes Act provides that “Any person who, knowingly or intentionally sends a message or other matter by means of computer systems or network that is grossly offensive, pornographic or of an indecent, obscene or menacing character or causes any such message or matter to be so sent commits an offence under this Act...”. The expression “sending” in this context will include posting, tweeting, or any other means by which electronic communications are conveyed. This section does not specify cyberbullying and it refers only to the content of the communication or matter sent. The section pinpoints such matter that is grossly offensive, pornographic, indecent, obscene or of menacing character and criminalises the act of sending such communications. The phrase “grossly offensive” was stated in the UK case of *DPP v Collins* [24] to mean when a message causes gross offence to those to whom it relates, not necessarily the recipients. The case was determined in the context of section 127(1)(a) of the UK Communications Act 2003 which contains similar provisions with section 24(a) of the Cybercrimes Act.

Pornographic content is any material containing explicit description or display of sexual organs or activity intended to stimulate sexual excitement. Indecency and obscenity are usually used alongside each other and according to Parker C. J., in *R. v. Stanley* [53], “The words “indecent” or “obscene” convey one idea, namely, offending against the recognised standards of propriety, indecent being at the lower end of the scale.” The Judge however distinguished both from each other and said, “...an indecent article is not necessarily obscene, whereas an obscene article almost certainly must be indecent”. Indecent has been defined to mean something that is “disgusting to sense—abhorrent to morality or virtue; containing languages regarded as taboo in polite usage; repulsive by reason of moral or ethical principles” [53]. Under the Nigerian criminal jurisprudence, an obscene matter is one which has the tendency to deprave and corrupt persons who are likely to read, see or hear the matter [20, S.233C]. It is noteworthy that even where a message or communication is not obscene, it can still be indecent.

The link between the provision of section 24(a) of the Cybercrimes Act and cyberbullying is seen where communications or messages used to cyberbully are

of grossly offensive, pornographic, indecent, obscene or menacing character. For instance, outing and trickery involve sharing embarrassing information or personal data of another person with others without the owner's permission and for malicious purposes. From the incidents discussed earlier in this paper, the mere posting of pornographic, indecent or obscene imagery online falls within the parameters notwithstanding whether the imagery belongs to another person or it is aimed at harming the owner. Section 24(a) criminalises a great deal of online onslaught and it is worthy of note that a similar provision in the UK Communications Act 2003 has been used to prosecute the sending of messages with menacing character as well as hate speech. An instance was the *R v John Raymond Nimmo and Isabella Kate Sorley* [52]. It needs to be said however that there have been strong criticisms against the policing of social media speeches with the UK Communications Act 2003. This is on the basis that the legislation was enacted before the emergence of those social media platforms and as such social media practices were not in the intention of the parliament when enacting the legislation [3].

Section 24(b) of the Cybercrime Act prohibits sending false information for the purpose of causing injury. The section reads that any person who knowingly or intentionally sends information which the person knows to be false about another person for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill-will, or needless anxiety commits an offence. It has been noted that the act of sending false information is mostly carried out on social media platforms and it includes quoting out of context, exaggerations and misrepresentation of statements made by other persons [4, p. 115]. This provision covers a situation where the content of the message or communication used to cyberbully another person is false.

Another provision in the Cybercrimes Act pursuant to which cyberbullying can be prosecuted is section 24(2)(a). It provides that "Any person who, knowingly or intentionally transmits or causes the transmission of any communication through a computer system or network to bully, threaten or harass another person, where such communication places another person in fear of death, violence or bodily harm or to another person commits an offence under this Act and is liable on conviction". For the section to be applicable, the act of cyberbullying must either put the victim in fear of death, violence or bodily harm. However, it is not in all cases of cyberbullying that the victims are in fear of death or any bodily harm as the requirements for cyberbullying is satisfied once there is an intention to harm the victim in any kind of way.

While it is noted that section 24(2)(a) of the Cybercrimes Act does not accommodate all forms of cyberbullying, nonetheless, the most common forms of cyberbullying in Nigeria as discussed above can be prosecuted under this section. There is an academic consensus that cyberbullying poses a threat to the health of victims and also that the effects of cyberbullying include anxiety and suicidal behaviour [16, 58]. The effects of cyberbullying are in most cases connected to mental injury since there is usually no physical contact between the cyberbully and the victim. There has been the argument on whether mental injury is covered by bodily injury and the widely accepted view is that when mental injury manifests in bodily injury, then a claim for mental injury can be sustained under bodily injury [26]. The mental effect of

cyberbullying usually manifests in social phobia [30], headaches [46], social isolation and in some cases victims may develop mental illness [23]. All these effects are physical manifestations and are as such covered by section 24(2)(a) of the Cybercrimes Act. Moreover, it may be difficult to prove that a victim of cyberbullying has not suffered physical or bodily injury. Victims of cyberbullying as discussed in this paper usually find themselves withdrawing from social activities in many cases. This is understandable as persons whose personal data, which are intended to be kept private but get circulated all over social media platforms, would not want social visibility at least for some time afterwards.

4.2 Criminal Code Act and Penal Code Act

The Criminal Code Act and the Penal Code Act are both the major criminal laws in Nigeria. The Criminal Code Act applies to the whole of Nigeria apart from the Northern part of the country where the Penal Code Act is applicable. These laws deal with content of communications or messages made to the public as they criminalise obscene publications. Section 233D of the Criminal Code Act provides that “any person who, whether for gain or not, distributes or projects any article deemed to be obscene for the purposes of this Chapter, commits an offence punishable on conviction.” A similar provision is contained in section 202 of the Penal Code Act which states that whoever...exhibits to public view any obscene book, pamphlet, paper, gramophone record or similar article, drawing, painting, representation or figure...shall be punished”.

The Criminal Code Act further provides the test for obscene publications and by section 233C, an article shall be deemed to be obscene if its effect can deprave and corrupt persons who are likely to read, see or hear the matter contained in the publication. “Deprave and corrupt” was explained in *R. v Penguin Books Ltd* [54] and according to the court “deprave” means to make morally bad, to pervert, to debase or corrupt morally while Corrupt means to render morally unsound or rotten, to destroy the moral purity or chastity, to pervert or ruin a good quality, to debase, to defile.”. These provisions apply to cyberbullying when the message posted consists of the proscribed characters.

There are other laws in Nigeria that also prohibit obscene publications. These include the Obscene Publications Act 1961 (now Law of Lagos State 2003), Children and Young Persons (Harmful Publication Act) Laws of the FCT 2007, The Cinematograph Act 2004, the National Broadcasting Commission Act 2004, Nigerian Communication Commission Act among others. Also, action for defamation under tort law can lie where cyberbullying messages are libellous in nature.

5 Adequacy of Legal Response

There is no doubt that there is legal response to the issue of cyberbullying in Nigeria. The adequacy of the legal response made will however depend on how effective the response has been, or is capable of being. There are some requisites which

must be present or considered by the legal framework on cyberbullying for the legal response to be deemed as adequate. First, legal response must address cyberbullying in all its forms; it must be realistic in achieving its set objectives thereby shaping the society; and it must address the issue of data protection. These shall now be discussed.

5.1 Address Cyberbullying in All Its Forms

To determine the adequacy of legal response, there must be a consideration of whether the legal regime is capable of putting an end to the menace of cyberbullying whether through penal or civil measures. It can be seen that the body of laws on cyberbullying in Nigeria focus on materials that are grossly offensive, pornographic, indecent, obscene or menacing in character; false information for the purpose of committing injury; and materials aimed at bullying, threatening or harassing that places another person in fear of death, violence, or bodily harm. Some forms of cyberbullying are thus not covered in the legal framework. For instance, a form of cyberbullying is exclusion which is the deliberate exclusion of a person from an online group. The laws that address cyberbullying in Nigeria do not specifically make provisions for when a person is excluded from an online group. This may be as a result of the fact that exclusion as a form of cyberbullying does not receive so much public attention and as such it is not so much an issue. This is unlike in traditional bullying where social exclusion is obvious and easily noticed. Research has shown that exclusion is one of the most common forms of traditional bullying in higher institutions in Nigeria [2]. A claim may nonetheless be made to enforce the right to freedom against discrimination as enshrined in the 1999 Constitution under this circumstance.

The term “grossly offensive, indecent, obscene or of menacing character” contained in the Cybercrime Act widens the spectrum of acts of cyberbullying that can be prosecuted under the Act. This is because messages, communications or materials used to cyberbully are most likely to contain one of the proscribed characters. The UK cases of *DPP v Collins* [24] and *Chambers v DPP* [15] which were decided based on section 127(1) of the UK Communications Act further show that a message with the grossly offensive character needs not be read or received by anyone. Once a person reading the message would feel fear or apprehension, then the conduct element of the offence is complete upon sending [37]. As earlier discussed in this paper, the use of imagery and videos for cyberbullying is rampant in Nigeria and in most cases it is the offensive, indecent or obscene character of the imagery that even prompts perpetrators to post or share those imagery online. When received, such messages are also usually shared, forwarded or retweeted depending on the social media platform, due to the offending nature of the message.

The term “grossly offensive” is not defined in the Cybercrimes Act and this makes uncertain those contents that fall within the category. For instance, an act may be offensive but still does not amount to a criminal offence. Unfortunately, the provisions on cyberbullying under the Cybercrimes Act have been under-utilised in Nigeria causing a dearth of judicial pronouncements on them. A look at the UK

jurisprudence on offensive messages reveal that reaching an agreement on acts that are offensive is problematic [37]. The Judicial Committee of the House of Lords in the case of *DPP v Collins* [24] found the message sent by the offender “grossly offensive” because the message involved language “beyond the pale of what is tolerable in our society” [24]. This means that the test is an objective one, that is, whether a reasonable man in the society will find the message tolerable or intolerable. Taking a cue from this, the Cybercrime Act can be said to cover outing and trickery forms of cyberbullying by the “grossly offensive” character since most messages used for outing and trickery have content a reasonable man in Nigeria will find intolerable.

Trolling which is another form of cyberbullying that is common in Nigeria is not fully covered by the Act. It only becomes an offence to the extent that those messages used consist of characters proscribed by the Cybercrimes Act. Trolling nonetheless may not consist of any grossly offensive, indecent, obscene or menacing characters but will still have damaging effects on the victim. Trolling is the use of argumentative, controversial, or disruptive information to intimidate, harass, or cause distress to another person. When trolling involves harassment or intimidation, it will be covered by section 24(2)(a) if the victim is placed in fear. This cannot be said however if trolling puts the victim in distress as the section does not specifically provide for that. Meanwhile, trolling in some cases may come across as mere participating in a controversial conversation online but in actual fact such conversations are causing distress to the victim. An instance was the incident of Michael Asiwaju earlier cited in this paper whereby Twitter users made several denigrating comments about him being a rapist. Some of the comments did not contain indecent, obscene or offensive messages but the comments still caused distress to the victim to the extent that he committed suicide. Hence, the legal response in terms of addressing all forms of cyberbullying in this regard is not adequate.

5.2 Laws on Cyberbullying Must be Capable of Achieving Set Aims by Shaping the Society

The social engineering theory as postulated by Roscoe Pound views law as a tool that is able to change the behavior of society [39]. That is, law is made to enlighten people in order to achieve the desired change and also for the welfare of society [31]. In relation to cyberbullying, the adequacy of legal response can be determined by the ability of the laws on the subject matter to achieve the desired change in the society. In this regard, laws on cyberbullying must put into consideration the socio-cultural landscape of Nigeria for their enforceability. Firstly, some cultural precepts in Nigeria encourage forms of traditional bullying which have now transformed into cyberbullying. Social exclusion such as ostracism and banishment was prevalent in the custom of many ethnic groups in Nigeria as a way of punishment for some types of offence [55]. It needs to be said however that such customs have been declared inconsistent with the 1999 Constitution of Nigeria due to their violation on the right to freedom from discrimination [1, S. 42]. Regardless of the fact that the practice of social exclusion is gradually waning, its philosophy still subsists and where it is not done formally as flowing from

community imposed sanctions, individuals and their families can still exclude some castigated individuals having committed a wrong [19, p. 53]. This tradition has now been transported to the cyber world and it is not unusual for an individual in a cyber-group who has committed a wrong to be ostracised from the cyber group.

Another form of custom that has transformed into some form of cyberbullying is the concept of collective responsibility in many ethnic groups. This is a situation where the welfare of individuals or family is a collective responsibility of the community. An offshoot of this principle is that the community has the right to discipline an individual who misbehaves within that community. Usually, a child that misbehaves can be disciplined by any elder within the community in the absence of the parents of the child [41, p. 133]. While westernization has eradicated collective responsibility to a large extent, the culture still finds expression in the way everyone has a say in the affairs of the other person and so individuals who commit wrongdoing are berated by the community at large. This culture can amount to trolling and roasting when done online as internet users in Nigeria deem it fit to scold persons who are believed to have committed wrongful acts regardless of the distress caused to those persons.

In line with sociological jurisprudence, legal measures to curb or criminalise cyberbullying need to consider those socio-cultural factors that impact on cyberbullying. For instance, to criminalise trolling as a form of cyberbullying in Nigeria, attention must be given to the customary societal orientation concerning the use of argumentative and controversial communications to correct a wrong. Although trolling in its basic form is not yet criminalised in Nigeria, it is hoped that laws will be enacted to this effect in order to curb the menace. For such laws to be enforceable it must be enacted in a way as to reflect the social sentiments of the Nigerian society. This is not to say that trolling should not be criminalised due to social sentiments, it indeed should be, but the parameters must be clearly stated so as to provoke its enforceability.

Secondly, for the laws on cyberbullying to achieve the desired change in the Nigerian society, there must be clarity on what acts actually constitute cyberbullying. In the same vein, it should be determined what acts of cyberbullying should be criminalised and what aspects should be regulated under civil law because cyberbullying involves a wide spectrum of acts ranging from serious conducts to mere lack of online etiquette. Also, consideration must be had of the fact that not all forms of cyberbullying are actually unacceptable [40, p. 1802]. Political trolling for instance which is often used by politicians against their opponents is quite normal. Also, citizens can at times engage in trolling government officials as a matter of protest against certain ills in the society. As a matter of fact, in Nigeria, government officials are often trolled when they exhibit any form of abuse of power. A lawmaker in Nigeria became a “victim” of online trolling sometime in 2019 when a video of him physically assaulting a shop attendant was circulated online [61]. Citizens saw his act as unlawful and called the authorities to ensure that justice was done. This shows that some forms of cyberbullying such as trolling can actually be utilised at times for lawful or positive purposes. Any legal response to manage cyberbullying therefore needs not only to determine acts that

will amount to cyberbullying, but also the circumstances in which those acts will amount to cyberbullying. The current legal response to cyberbullying in Nigeria does not cater for this.

In the same vein, legal response to cyberbullying needs to have regard to socially acceptable use of language because there are some expressions which on the face of it may seem to contain the proscribed characters but when considered within social boundaries, they are actually harmless. In the Nigerian tort law of libel and slander for instance, the court in *Bakare v Ishola* [10] held that certain words spoken in the heat of passion are words of abuse and therefore not actionable as defamation. The court in the case took judicial notice that it is common for people to abuse each other as a prelude to a fight. Judicial notice was also taken of some words or expressions which are used by people to abuse one another as mere vulgar abuse and not defamatory in nature. Judicial notice was taken of the fact that the Yoruba people of Nigeria commonly abused each other as “ole” (thief) and this does not in any way amount to slander. For law to achieve the desired change and to be enforceable, socially acceptable language or conducts need not be characterised as cyberbullying.

In addition, before a law can shape the society, there must be a realisation by the society of the bane the law seeks to change. It is noted that there is generally lack of awareness of the purports of cyberbullying in Nigeria and people often times do not know that they are engaging in one form of cyberbullying or the other. In contrast to the traditional bullying, there is no physical contact between the cyberbully and the victim, hence the cyberbully cannot see the expression or countenance of the victim and so may not know if or when the victim is feeling hurt by the former’s gestures. It has been observed that it is possible that a cyberbully is just having fun and since the emotional reaction of the victim cannot be seen, the cyberbully may just continue and thereby go overboard. The same goes for the victim who may due to inability to see emotional reaction of the cyberbully, find it difficult to know whether the cyberbully is actually cyberbullying him or her, or the cyberbully is just having fun or teasing [56]. This underscores the need for a legal regime that will be explicit enough to contextualise cyberbullying especially considering the socio-cultural landscape of Nigeria whereby the society is deemed to have the right to berate behaviours that is contrary to its dictates without considering the rights of the individual involved. A common act is the sharing or forwarding of content of proscribed character while being ignorant that it is a criminal offence.

The current legal response to cyberbullying in Nigeria as expressed in various laws and particularly the Cybercrime Act, caters for different kinds of crimes and torts and as such, cyberbullying is merely subsumed in the legal framework obtained. This makes it difficult for those laws to consider the issues necessary for the laws to shape the society as it relates to cyberbullying. The current laws do not consider the socio-cultural landscape of Nigeria concerning cyberbullying; they are not explicit in terms of acts that amount to cyberbullying and the required threshold; so also there is a lack of public awareness on cyberbullying which makes it difficult for the desired change to be achieved. It can thus be rightly said that the legal response in this regard is inadequate.

5.3 Address the Issue of Data Protection

Data protection has to do with safeguarding personal data by laying down the rights of persons over their data. The essence of data protection legal regimes is to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data [45, S. 1.0], [32], Art. 1(2)]. This makes the right of privacy of persons an integral aspect of personal data protection [72, p. 2]. Personal data refers to any information relating to an identified or identifiable natural person. Such information includes name, address, a photo, an email address, bank details, posts on social networking websites, and medical information [45, S. 1.3].

Data protection legal frameworks contain a number of principles governing how personal data will be processed. Some of these principles are that data should only be collected and processed in accordance with specific, legitimate and lawful purpose consented to by the Data Subject [45, S.2.1(10)a)]; personal data must be adequate, accurate and without prejudice to the dignity of human person [45, S.2.1(1) (b); and secured against all breaches [45, S.2.1(1)(d)]; and data shall not be obtained except the specific purpose of collection is made known to the Data Subject [45, S.2.3.]. Data protection regimes only regulate activities of Data controllers, Data Administrators or processors in their use of personal data of natural persons, and some regimes such as the EU General Data Protection Regulation 2016/679 (GDPR) and the Personal Data (Privacy) Ordinance of Hong Kong provide for an exemption of application for where processing is carried out by individuals purely for personal or household activities [29, Art. 2(c)], [50, S.52]. Nonetheless, where data held by individuals is used for other purposes beyond what it is held for, such as for cyberbullying, the exemption will not apply [70]. The Data Protection Regulation of Nigeria applies to all cases of data processing no matter the means by which the data is processed [45, S.1.2]. The regulations also make it clear that an individual can be a data controller or a data administrator [45, S.1.3].

The relevance of data protection to cyberbullying is that data protection regulations can be applied to cases of cyberbullying where it involves a disclosure of personal information [64, p. 53]. As earlier noted in this paper, outing and trickery which are common forms of cyberbullying in Nigeria engage the use of personal data such as imagery and videos of victims without their consent. There are online pornographic sites that allow the posting of content among which are leaked private photos or videos. There are other sites that post leaked sex videos and private images of persons without permission or consent of the owners of such materials. Some sites out rightly state that their contents are leaked videos and they request online users to send them those videos. An example is a website called DarkNaija.com [21]. This can encourage hackers to steal personal intimate videos or pictures from victims' phones and computer devices. Indeed, in one of the trickery instances earlier discussed in the paper, the video in issue was posted on one of these porn sites. When these pictures or videos get posted on those sites, they become visible to the public and anyone can use those videos or pictures to cyberbully the owner. There is already a campaign against such websites in the UK [33].

The data protection regime refute the earlier legal position that imagery such as photographs or videos of persons taken in a public place are outside the control of

those persons and are only subject to copyright laws. The regime of data protection makes the consent of the data subject mandatory before his personal data, in this case, imagery, is processed. The office of the Information Data Commissioner of the EU provides a guidance on this as it relates to street photography and it emphasises that “if a photographer takes a photograph of an identifiable natural person in a public space and the same photograph is published, the [data protection] law and its underlying principles will apply” [49]. The other principles of data protection are also applicable, one of which is that the information should only be processed for the explicit lawful purpose for which it was collected and not in a way incompatible with the original purpose. The regime therefore curbs situations where cyberbullies take photographs or videos of their targets in a public place, post it online to elicit hurtful commentaries from the public for the purpose of harming them. Despite the fact that there is a data protection regime in Nigeria, there were no known cases in Nigeria at the time of this research where privacy rights have been enforced pursuant to the Data Protection Regulations so judicial opinion on the issue is not available.

An issue related to data protection is that of image rights. Image rights prevent the use of the image of persons without their authorisation. The right is basically a protection against unauthorised commercial exploitation of the image of a person [63, p. 187]. Image right is protected by statutes in some states in the US such as California [14] and Florida [28]. The jurisprudence of image rights however indicate that image right is borne out of commercial considerations and not that of privacy [69]. In the case of *Proactive Sports Management Ltd v Rooney & Ors* [51], image right was defined to mean “the right for any commercial or promotional purpose to use the Player’s name, nickname, slogan and signatures developed from time to time, image, likeness, voice ...” [51, para. 187]. This means image right is usually invoked when images and so on are used for commercial purposes and it may not necessarily apply to cases whereby a person’s imagery is posted online or used without the person’s consent but not for commercial purposes [42, p. 128]. It is also noted that image right is linked to celebrity [68] which has commercial value and private persons can hardly claim the right due to commercial connotations [42, p. 133].

6 Conclusion

Cyberbullying, particularly outing; trickery; trolling and roasting, is a phenomenon that is becoming increasingly rampant in Nigeria with some victims becoming suicidal or actually committing suicide. The legal response to the issue must as a matter of fact make certain considerations such as addressing cyberbullying in all its forms, be able to curb the menace, and also address data protection. It is noted that Nigeria has legal measures in place in response to cyberbullying but, the legal response is not adequate. This paper therefore recommends that the legislature should determine what measures will be appropriate for curbing cyberbullying considering the fact that the gravity of acts of cyberbullying varies and so both penal and civil measures may be suitable depending on each case. It is expedient that an extensive legislative research on socially acceptable expressions and conducts be carried out for the

purpose of enacting laws to curb or criminalise cyberbullying. Law reforms in this area should also make room for public enlightenment on the issue of cyberbullying so that the public will be aware of conducts amounting to cyberbullying and their roles in curbing it.

In addition, it is imperative that there is implementation of extant laws in Nigeria that criminalise certain conducts which in some cases are instrumental to cyberbullying. These include laws that criminalise obscene, indecent and grossly offensive publications. Furthermore, the data protection regulations should be well utilized and as such, citizens of Nigeria should seek to enforce their privacy rights under the regulations against wrongful use of their personal data such as imagery or video. This will minimize situations of outing and trickery which usually involves personal data. Image rights should be embraced in Nigeria and its scope widened to accommodate privacy rights to the extent that when a person's personal data like image, or video and so on is being utilized for "offensive" purposes, the owner can claim this right against such user. This should be set against the backdrop of data protection laws and as such the exceptions under the data protection regimes such as public interest, scientific or historical research purposes or statistical purposes will also apply. More enlightenment on data protection regimes should be carried out for legal practitioners as well as the public particularly as it relates to processing of imagery of persons in the light of online posting or sharing of other persons imagery. A culture of respect of the right to privacy of persons should be imbibed by persons in Nigeria.

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