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## Introduction

The dawn of the new millennium has brought tremendous changes in global perspectives. The concept of unknown horizons and unexplored world terrains vanished. In a sense the huge world, which we thought was so vast that one cannot travel from one end to the other without spending one's generation, shrank. Societies grew from interactional to isolated populace where each spends most of his time sitting in front of a computer. With the advent of such revolution the concept of Cyberspace was born and with it, the lives of the people and how they interact with one another correspondingly and dramatically changed.

William Gibson in his 1984 book *Neuromancer* first defined the word cyberspace as "a consensual hallucination experienced daily by billions of legitimate operators, in every nation by children being taught mathematical concepts. A graphical representation of data abstracted from the banks of every computer in the human system. Unthinkable complexity. Lines of light ranged in the non-space of the mind, clusters and constellations of data" (Gibson, 1989). Gibson envisioned that the development of high end computers and the birth of the Internet will create a holographic data bank wherein people will begin to metaphysically interact with people and environment. In a sense what he theorized as a non-space place in the minds of every citizen somehow came into reality.

Almost every kind of data may be found in the Cyberspace and with the advent of the Internet, access to them became a matter of seconds. As virtual as the Cyberspace may seem, what may be found in them are in straight graphical replica of what is real. The system of data access became revolutionized and from the macro schemes of things to the crudest representations of information, even information and on-line interaction between people became possible.

The concepts of on-line communication through the Internet, use of interactive cameras, blogs, E-mails, Youtube, on-line posts, and other related terms were born and with it the way societies interact and even behave changed. Human interactions and some of the traditional way people deal with other people in the society even the way stalking and bullying greatly changed.

This paper is conceptualized to shed light upon the revolutionized way by which stalking and bullying is carried out in various socio-political context. It is hoped that the concept of cyber

stalking and cyber bullying be given an extensive definition and be contextualized in the Philippine setting. It is also hoped that effects from the micro-level and macro-level of understanding be relayed with the end view of justifying the harshness and severity of the damage and injury such acts cause. This paper will also attempt to lay the legal grounds by which cyber stalking and cyber bullying legislation will be based and will involve analysis of the current applicable laws on the subject matter including an analysis on the sufficiency and insufficiency of the laws available designed to prevent the practice of such acts and recommend, if applicable, for further enactments of laws punishing such acts if it will appear that available laws are insufficient to encompass the same.

### **Stalking and Bullying: Concept and Definition**

The concept of stalking and bullying as a negative social behavior has been a social phenomenon for a long time now. Psychologists and social scientists would always dissect its causes and effects and would always relate its definition from a wide range of social spectrum from post traumatic stress to negative social experiences. In the book "The Bully, the Bullied, and the Bystander" (Coloroso 2003), bullying is defined as a negative form of behavior usually involving an imbalance of power between two individuals, a repetitive behavior usually involving verbal harassment, physical assault, and other moderate means of coercion and manipulation. Stalking on the other hand has been scarcely defined as a behavior usually connected with an unwanted attention from a stranger towards someone with no legitimate or clear reason (Meloy 2001). Bullying and stalking are "abnormal" behaviors disruptive of standardized norms. Victims of such negative behavior usually exhibits fear and anxiety and had no other protective means by which they can cloak themselves but resort to clinical therapy from psychiatrists. The effects of such untoward phenomenon is normally incapable of empirical estimation and usually the victim or victims become counter-productive at the expense of social harmony.

Throughout the years stalking and bullying have been exhibited in almost all kinds of environment but a bulk of such cases especially bullying usually happen in schools and the perpetrators are normally children from pre-school to high school. Stalking on the other hand does not have an exact environment or perpetrator age-group because of its process which involves a sequence of events and is committed from anywhere from the point from where the victim reside up to their places of study, work, recreation, etc.

Article II Section 5 of the 1987 Philippine Constitution states that, "the maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all people of the blessings of democracy." One of the avowed policy of the government is the promotion of the general welfare of the people and in order to enjoy peace and order means curbing untoward behavior which essentially disrupts social harmony. As the act of bullying usually transpire among children, it is hard to impose punitive justice against them. As the effect of bullying manifest in different forms, the more evident manifestation by which the law may interfere is when physical assault was committed. However, since the perpetrators are mostly children under the age of majority, the restorative form of justice embodied in Republic Act 9344 or the Juvenile Justice Law is employed wherein child offenders are subjected to intervention program and is brought to child caring institutions in the hope of reintegrating him in the society.

Stalking on the other hand, due to the circumstances by which it was committed, do not have an exact enabling law by which it is punished. Stalking involves actions wherein the perpetrator or stalker would follow the activities of the victim and is normally tagged as following another person's movement from one place to another. At most, the victim may avail of the provisions under Article 202 (4) and Article 287 of the Revised Penal Code. Under Article 202 (4) of the Revised Penal Code, any person who, not being included in the provisions of other articles in this Code, shall be found loitering in any inhabited or uninhabited place belonging to another without any lawful or justifiable causes and who shall be found guilty thereof shall be punished by arresto menor or a fine not exceeding 200 pesos, and in case of recidivism, by arresto mayor in its medium period to prision correccional in its medium period or a fine ranging from 200 to 2,000 pesos, or both, in the discretion of the court. Article 287 of the same punishing unjust vexation by arresto menor or a fine ranging from 5 to 200 pesos, or both. The duration of such penalties, which ranges from one month and one day to six months in case of arresto mayor and one day to thirty days in case of arresto menor, and the meager fines by which the offenses are punished cannot surpass the psychological trauma and other effects of such negative behaviors.

### **The Birth of Cyber stalking and Cyber bullying**

In the advent of the technological revolution, these negative behaviors took a different path in the way it is committed and in the place where it is committed. With the use of Internet, such as e-mails, blogs, on-line posts, social networking sites, Youtube, etc., the means by which stalking and bullying is carried out to torment others took another form. With the way the internet is being used and the availability of almost all kinds of information and the revolutionary on-line communication using web cameras, cyber stalking and cyber bullying was born.

### **Cyber stalking**

Cyber stalking is generally defined as the use of Internet or other related means to stalk someone. It has been scholarly defined as the use of information and communications technology, particularly the Internet, by an individual or group of individuals, to harass another individual, group, or organization. It involves false accusations, monitoring, the transmission of threats, identity theft, damage to data or equipment, the solicitation of minors for sexual purposes, and gathering information for harassment purposes (Bocij 2004).

The effect upon the individual who fall as victim to such disruptive behavior ranges from mild psychological stress to anxiety and paranoia. Perpetrators usually use the flexibility of the Internet to obtain information about the victim by tracing their IP address thereby accessing their home, office, or school address. It may also come in a form wherein an individual or group of individuals or, in case of syndicated cyber crimes, organizations use blog sites, e-mails, social networking sites such as Friendster, Twitter, Facebook, Tagged, and the likes to discredit an individual or organization. It is accompanied by a malicious intent to damage one's reputation by sending malicious and false accusations against them for the purpose of discrediting their victims.

Recently, a blog posted by an individual discrediting a government agency for its alleged

hoarding of donated goods made an erstwhile media mob prompting internal strife, instability, and agency-wide investigation to trace the accuracy of the blog. It even reached international landscape as some of the donors are foreign countries aiding in the relief operations of the government for the casualties of the recent destructive typhoons. The investigation is still on going however the damage caused by the blog upon the reputation of the agency appears irreparable.

With on-line posts which can be both in written and visual communication, one may be able to discredit or simply harass another by uploading, in the case of visual communication, pictures, messages, video recording involving another person, group of persons or organization in the Youtube or other similar sites. Threats are also sent through e-mails and other similar form of internet communication. Another popular way by which cyber stalking transpire is by monitoring their private activities using high-end communication gadgets ran by the internet and other form of information technology tools. Trained and highly technical skilled individuals may tap upon streetlights, building cameras and CCTVs to follow one's movement. Without any legitimate purpose, they seemingly spy upon another's activity without any clear design other than to harass them.

On-line dating sites which is now becoming popular are also means by which a cyber stalkers can carry out their misdeeds. Actual meet-ups through such sites can be arranged by the cyber stalker and from then on follow their victims to their respective abode and all other places where the victim may go. It is clear that maliciously and consciously, cyber stalkers create a sense of fear from their victims where the latter would inevitably develop defense mechanisms which can come in different forms depending upon that individual's pyshcological make-up. Usually it creates negative impacts causing stress and trauma in defiance to what is supposedly a peaceful and harmonious society.

### **Cyber bullying**

Cyber bullying on the other hand may be defined as an act of bullying another individual, group of individuals, organization through the use of the Internet or other similar means. It has been also defined as a situation when a child or teen is repeatedly tormented, threatened, harassed, humiliated, embarassed or otherwise targeted by another child or teen using text messages using the Short Messaging System (SMS), e-mails, or any other type of digital technology (Pacthin and Hinuja 2009). It is usually manifested through continuous sending of e-mail, SMS messages, or other similar type of digital communication devices or Internet-based gadgets to an individual despite the latter's plea that he or she does not want any further contact with the sender. It also includes threats, sexual remarks, hate messages, or any other means by which one is ganged up by making them the subject of ridicule in chat rooms, public on-line forums, and the likes designed nothing more but to humiliate and harass.

Although generally cyber bullying is attributed to children or teens, it is also committed by an adult who does not have any legitimate agenda against another and simply wants to publicly harass, embarrass or humiliate another. One of the most famous way by which cyber bullying is carried out is when a person, or group of persons maliciously pose as their victims through a established replica of the latter's e-mail, blog site and SMS messages to solicit material

remuneration or simply act and behave foolishly to discredit the victim. Some cyber-bullies use public on-line sites to defame another or threaten to defame them if the victim would not give in to their whims and wishes. Some threaten and publish gossip or rumors on similar public on-line sites to instigate others to gang up on the target. Some use such means to solicit sexual favors and threatens to continue embarrassing the victims if the latter would report to authorities.

In 2008 researches from the University of Wisconsin-Eau Claire documented that cyber bullying has been steadily increasing in alarming rates through the years. Using a random sample of about 2000 middle-school students as respondents from a large district in the southern part of the United States, about 10% admitted to have been cyber-bullied in the previous 30 days while over 17% admitted to have been bullied at least once in their early stages of schooling (Patchin and Hinduja 2009). The research has been concentrated on children and teens because of the frequency by which they use the internet. It is posited however that since adults also frequently use Internet-based computers and gadgets, earlier research also points out to the high rate of bullying among adults. Just like cyber stalking, cyber bullying may have far reaching psychological effects upon a victim. Fear, anxiety, restlessness and other psychological drawbacks may damage another's welfare and physical well-being. Victims may also develop low esteem that may often leave them unproductive and lacking in self-confidence which may eventually damage their social worth.

### **Cyber stalking and Cyber bullying Legislations**

The first cyber stalking law took effect in 1999 in California, US while the first cyber bullying law took effect in 2007 in states including New York, Missouri, Rhode Island and Maryland.

At present, the Philippines has no explicit legislation on cyber stalking or cyber bullying. Nevertheless using the aforementioned definition of cyber staking pertaining to the involvement of false accusations, transmission of threats, identity theft, damage to data or equipment, certain acts could be subsued in the acts prohibited under the Republic Act No. 8792, An Act Providing for the Recognition and Use of Electronic Commercial and non-commercial Transactions and Documents, Penalties for Unlawful Use Thereof and for other Purpose or the E-Commerce Act, to wit:

SEC. 33. Penalties. - The following Acts shall be penalized by fine and/or imprisonment, as follows:

1. Hacking or cracking which refers to unauthorized access into or interference in a computer system/server or information and communication system; or any access in order to corrupt, alter, steal, or destroy using a computer or other similar information and communication devices, without the knowledge and consent of the owner of the computer or information and communications system, including the introduction of computer viruses and the like, resulting in the corruption, destruction, alteration, theft or loss of electronic data messages or electronic document shall be punished by a minimum fine of one hundred thousand pesos (P100,000.00) and a maximum commensurate to the damage incurred and a mandatory imprisonment of six (6) months to three (3) years.

It is apparent that the above-mentioned law only provides penalties to specific acts done to promote cyber stalking. It only subsues the tip of the gamut of cyber stalking. The danger that is posed by cyber bullying and cyber stalking has more far-fetching residues and ripples upon social peace and order. For someone to haunt another's peace of mind debases morality and effectively undermine trust and confidence in the social forces that is supposed to safeguard people's welfare against social harms.

Despite the lack of clear cut legislation designed to curb cyber stalking and cyber bullying, there are current efforts recognizing the dangers that these negative practices bring upon an individual or group of individuals in a society. In April 2009, Senator Juan Ponce Enrile filed Senate Bill No. 3177 entitled An Act Defining Cybercrime, providing for the prevention, supression and imposition of penalties and for other purposes. The Bill recognizes the stark advantage of the internet as it is nowadays a necessity and a tool for development and efficiency. However it also recognizes the growing criminal perpetrators using the internet in carrying out their illegal activities. The Bill seeks to define what consitutes cybercrime and has mentioned in passing cyber stalking as an emerging trend espousing safer medium to stalk someone as this will not require physical presence when committing the misdeed and would only require an internet capable computer system. In the said proposed law however, cyber stalking and cyber bullying were not extensively mentioned as one of the cybercrimes needed to be addressed. It specifically tackled child pornography using the internet as well as Internet espionage and similar scenarios.

Senator Manny Villar on March of this year filed Senate Resolution No. 915 entitled A Resolution Urging the Senate Committees on Science and Technology, Public Information and Mass Media and other Appropriate Committees To Conduct an Inquiry in Aid of Legislation, on the occurrence of Cyber Stalking Cases and the Modus Operandi Adopted to Perpetuate Crimes in the Internet with the end view of formulating a policy that will curb cyber stalking and protect on-line users in the country. The author keenly recognized the danger posed by someone pretending to be another person using the account of that person to solicit money and or perpetuate criminal activities such as extortion, sexual harassment and other forms of crimes. At present, the Resolution has yet to be passed upon by the Senate and is pending hearing before the appropriate committees. Cyber bullying however do not have, as of the moment, similar legislative recognition. As dangerous as cyber stalking, bullying on the Internet may qualify as a cybercrime under the E-commerce law but it may have a semblance in the proposed bill of Senator Enrile.

### **Conclusion and Recommendation**

In the micro level schemes of things, the psychological effects of cyber stalking and cyber bullying embeds upon an individual's social being and effectively stunt one's psychological development. Experts commonly attribute depression, anxiety, social isolation, nervousness after interfacing with technological equipment, lowered self-esteem, deficits in school performance, impaired health, and criminal tendencies as an adaptive form of behavior (Kowalski, Limber, and Agatston 2008). The psychological effects of such phenomenon undermines one's basic adaptation and cultural assimilation. Establishing grounds for one to have criminal tendencies in the future because of such phenomenon destroys the fundamental

concept of order in a society.

Preventing the phenomenon of cyber stalking and cyber bullying on the level of social based safety nets such as intervention programs offered by agencies catering the same may not be sufficient to curb such occurrence. It has been discovered through various researches conducted recently that those who were cyber-bullied are reluctant to even tell their relatives and peers that they were cyber-bullied for a lot of reasons and what is most glaring is that some does not even know they were cyber-bullied. Fear of retaliation and the thought of parents withholding cellular phones, computers and other Internet-based gadgets do prevent some children cyber-bullied from reporting the same (Kowalski, Limber, and Agatston 2008).

Cyber stalking is equally psychologically devastating to the victims, eventhough no physical contact in the perpetration of the said act. Victims of cyber stalking often experience psychological trauma, emotional breakdowns, changes in sleeping patterns, anxiety, helplessness, and declining health. It is clear therefore that cyber bullying and cyber stalking have devastating effects to an individual's social well-being and to view it in a holistic perspective, continuous proliferation of the same acts will bring about social discomfort, harm and even chaos. Strong advocacies to help fight such phenomenon is a necessity and informing and capacitating people from the intricacies of such phenomenon and a strong legislative will to enact laws establishing the grounds for penalizing such actions are necessary course of actions to stop the spread of such negative behaviors.

It is evident that available laws relating to cyber stalking and cyber bullying are not comprehensive enough to cover such acts. Proposed legislative enactments have yet to reach the stage when it becomes a full blown law after complying with the requirements set by law.

It is important to understand however, that cyber stalking and cyber bullying are relatively new phenomenon in the country. This is the reason why there are no laws specifically pertaining thereto as of the present time. The E-Commerce law may be used to encompass other related activities but the scope of the said law is not comprehensive enough to include specific crimes of cyber stalking and cyber bullying. Despite several proposed enactments and resolutions by the Legislative arm of the government, there is still a need to concretize specific enabling laws that will establish legal grounds for singling out acts of cyber stalking and cyber bullying and penalizing the same. Without a specific law to criminalize such acts, aggrieved parties may be left with no other recourse but to file for civil damages using the general law on human relations enshrined under Article 19 of the Civil Code of the Philippines which aptly states that:

Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith.

In the absence of such enabling law to criminalize such acts and provide penalties for the commission of such, the victim may only claim civil damages by way of filing cases on the basis of the above-mentioned provision. The perpetrator may pay the indemnity but may get away scott-free from the acts which he or she committed. The penalty provided by existing law do not commensurate to the damage and injury that such acts produce.

The vastness of uncertainty and abyss in the old world has diminished. Such social state subjects all people from cyber stalking and cyber bullying and exposes them to danger and risk of undermining their overall well-being. To appeal that perpetrators of such acts should be punished in a more severe manner cannot hold ground for under the law in order to fully prosecute individuals committing such acts. There must be a legal basis whereby courts may be guided as to what kind of acts, degree of severity, and the corresponding penalties each and every defined act therein will be penalized. As there is no such law such appeal should fail. As the famous criminal law principle aptly provide “there is no crime when there is no law punishing it” and cyber stalking and cyber bullying however severe and damaging their impacts would be cannot be punished unless there is specific legal provision stating otherwise.