

INTRODUCTION

This is the story of Megan Meir.

Megan was a 13 year-old girl living with attention deficit disorder, depression and weight issue.

In 2006, she met Josh Evans, a 16 year-old boy, on MySpace. They quickly established an online relationship. They had never met nor speak in person. Josh told her that he was home-schooled and had no access to a mobile phone.

Josh also told Megan that she was beautiful and before they knew it, Megan became completely smitten by Josh.

Months had passed and out of the blue, Josh informed Megan that he didn't want to be friends anymore. Apparently, he heard that she wasn't nice to her friends. He then started sending her hateful messages which was posted publicly on her page. By then, other people had joined in the hate party.

Some of the hateful messages included,

"Megan Meir is a slut."

"Megan Meir is fat."

But the worst of them all was this particular one by Josh,

"Everybody in O'Fallon knows how you are. You are a bad person and everybody hates you. Have a shitty rest of your life. **The world would be a better place without you.**"

That was the last message Megan read before she took her own life by hanging herself in her bedroom closet.

Megan would have been 23 this year.

Now, the story didn't end here.

Further investigations into the case revealed that Josh Evans did not exist. His online identity was created by Megan Meir's neighbours, Sarah Drew and Sarah's mother, Lori Drew.

You see, Megan and Sarah were friends who had a falling out.

Megan's mother testified that Sarah wanted to get Megan to feel she was liked by a boy, then let everyone knew it was a fake MySpace which would then humiliate her daughter.

Megan's mother also said, "I don't feel their intentions were for her to kill herself. But that's how it ended, anyway."

No criminal charges were filed against Sarah Drew and her family, or any of the participants in the hate party provoked by "Josh Evan"'s messages, partly because there were no laws drafted to criminalise these kinds of behavior.

The Meiers did not file a civil lawsuit but here was what they wanted: They wanted the law changed, whether it was state or federal, so that the Megan Meier story is not repeated.

Although this is essentially an American case, it is one that highlights the ugly face of cyber-bullying and how crucial it is for countries such as Malaysia that have opened up their doors to welcome the advent of cyber technologies, to have specific laws that will address cyber-bullying effectively.

How many of you think that the Megan Meir's story could never have happened in Malaysia?

Why not?

Are all Malaysian teenagers well-behaved and sensitive that none would ever dream of hurting another person?

Are Malaysian teenagers not receptive to online flattery especially from someone they love or admire?

Do they not have crushes? Or experience the need of wanting to be loved and admired?

Are they immune to acts of childish cruelty?

Are their skins so extraordinarily thick that they could withstand public humiliation?

Are they incapable of feeling so lonely and hurt that they would never contemplate taking away their own lives?

PART I

My name is Lim Ka Ea. I am the Project Manager for the Malaysian Center for Constitutionalism and Human Rights (MCCHR). Together with a small team of dedicated staff members and partner civil society organisations, we are running a campaign called PeopleACT.

PeopleACT stands for People Against Cyber Threats/Harassment. It is a new coalition working towards making the internet safer, a more respectful and empowering space for all through law reform and public awareness. Our focus area is cyber threats/harassment and other harmful cyber behaviour affecting personal safety and privacy.

I applaud USIM for putting cyber-bullying on its Syariah and Law Annual Legal Talk Series' agenda and thank Dr Muzaffar for inviting me to speak on cyber-bullying in Malaysia today.

Today, I would like to talk about three key points:

1. What is cyber-bullying and what are the existing laws in Malaysia that govern it?
2. Do we need a specific law to tackle cyber-bullying in Malaysia? If yes,
3. What are the parameters of this specific law? In other words, what should be the scope of this law to ensure that it will address the challenges of cyber-bullying effectively?

I have a feeling that some of you may be asking yourself, "Why am I here listening to a topic on cyber-bullying. Is this a serious concern in Malaysia?"

Well, to be honest with you, I don't know.

I don't know whether cyber-bullying is a serious concern in Malaysia because there hasn't been any compelling data to prove or disprove it.

In my research, the statistics provided by MyCERT (Malaysian Computer Emergency Respond Team), a national body established by the Ministry of Science, Technology and Innovation (MOSTI) to address computer security in Malaysia, said that 442 incidents of cyber-harassment were reported in 2015. This number is small compared to 3,539 incidents of spamming and 3,257 cases of fraud reported under the same statistics.

Meantime, a school national survey conducted in 2014 by CyberSAFE, a multi-partite initiative by the Ministry of Education, Malaysia Communications and Multimedia Commission (MCMC), MOSTI and DiGi, revealed that only 26% of the 13,954 respondents aged from seven to 19 claimed they had been bullied at least once. 52% said they had never been bullied while 22% said they were uncertain if they had been bullied.

Again, the number of those claimed being bullied appeared to be small.

However, I find this data to be problematic because the respondents/samples in that survey were not a real representation of the demography of Malaysia. 60% of the respondents were female while 17% were of Chinese ethnicity, whereas in 2014, the male and female ratio was about 1:1 and there were 22% Chinese. Only 3% and 5% of the respondents were living in Kuala Lumpur and Selangor respectively whereas the highest percentage of respondents were recorded in Johor, Sabah and Penang when the number of internet users are the highest in Kuala Lumpur and Selangor. Melaka was unrepresented in the survey.

In another survey conducted by Microsoft in 2012, Malaysia was ranked the 17th highest in online bullying among 25 countries¹. You may think to yourself, “17 out of 25. We’re not that bad, right?”

True, we were somewhere in the middle because according to this survey, 36% is the average worldwide percentage of total respondents who claimed to have been bullied and in that same survey, 33% of young Malaysians claimed to have been bullied online.

However, in this survey, the percentage of knowledge and worry about online bullying is significantly lower in Malaysia than the worldwide average. Only 32% of the Malaysian respondents claimed to know what online bullying is compared to the worldwide average of 57%, while 38% claimed to worry about online bullying compared to the worldwide average of 54%.

What this means is, the actual number of Malaysian respondents claimed to have been bullied online may be higher than 33% because those who did not know or worry about online bullying may not have been aware that they could have been victims of online bullying.

And why wouldn’t they know or worry about it?

According to Microsoft, only 4% of the Malaysian respondents said there was a formal school policy against bullying and 21% claimed there were some sort of education programme on bullying that were provided by their schools. 27% said their parents talked about online risks with them. These figures were much lower than the average worldwide percentage.

This leads me to conclude that general awareness on cyber-bullying among Malaysian youths, parents and schools is extremely low. It is likely that the data collected by the respective surveys mentioned above is not reflective of the actual situation in Malaysia, particularly when there is a high percentage of internet and social media users in this country.

A United Nations report said, “Violence is not new. Cyber violence is.” The Megan Meir tragedy teaches us something. It teaches us that we need to be prepared to deal with the ugly consequences of this new phenomenon that is called cyberspace. It teaches us that we

¹ China (70%), Singapore (58%), India (53%), Canada (40%), UK (40%), Australia (38%), USA (29%), Pakistan (28%), Japan (17%), UAE (8%)

have a responsibility to ensure that we have done everything we possibly can to prevent such tragedy from happening in Malaysia before it is too late.

Therefore, one of the questions we need to ask today is, "Should we only act when things become a serious concern?"

Part II

What is cyber-bullying and what are the existing laws in Malaysia that govern it?

There is no universal legal definition of cyber-bullying and one of the reasons being, there are not many countries in the world that have enacted laws to deal with cyber-bullying exclusively, including the United Kingdom and Australia.

Singapore's Protection from Harassment Act 2014 is perhaps one of the few laws in the world that criminalises cyber-bullying alongside other acts of harassment and stalking. The Act does not however, define what cyber-bullying is.

The Australian Human Rights Commission defines, "Cyberbullying is bullying that is done through the use of technology. For example, using the Internet, a mobile phone or a camera to hurt or embarrass someone."

Cyber Security Malaysia (a body under MOSTI) defines it as "when a child is distressed, humiliated or targeted using the internet, interactive and digital technologies or mobile devices."

Another definition I've found from the US which I thought is straightforward and easy to understand is, "cyber-bullying is when a child, pre-teen or teen is tormented, threatened, harassed, humiliated, embarrassed and targeted by another child, using the internet, interactive and digital technology or mobile phones."

To me, the Government of UK perhaps has the most comprehensive definition of cyber-bullying. It says that bullying is usually defined as behaviour that is repeated, intended to hurt someone either physically or emotionally, and often aimed at certain groups because of race, religion, gender or sexual orientation. It takes many forms and can include physical assault, teasing, making threats and name-calling. Cyber-bullying is all of the above but carried out via mobile phone or online.

So we can agree in general that cyber-bullying is a form of bullying conducted via the internet and other forms of electronic or digital devices and technology. But what's really interesting is this. Some definitions seem to view cyber-bullying as an issue affecting children only. Most literature on cyber-bullying appear to also support this view that cyber-bullying cases are often carried out by children on other children. One even states that when an adult bullies, it is termed harassment or stalking. So, it is unclear to me whether cyber-bullying should be limited to children only or should it also include adults, and this is something we need to think about when it comes to defining cyber-bullying.

Do we have existing laws in Malaysia that govern cyber-bullying? The short answer is no. However, there are laws that can be applied to cyber-bullying cases if they are linked to the following offences:

- (a) Unauthorised access to computer materials: For eg. hacking, changing password, tweet-jacking. So, tweet-jacking would consist of someone tweeting embarrassing things from your twitter account.

Section 3 of the Computer Crimes Act (CCA) 1997: If convicted for unauthorised access to computer materials, the offender is liable to a fine of not more than RM50,000.00 or a prison term of not more than 5 years.

Section 4 of the CCA: If convicted for unauthorised access to computer materials with the intent to commit or facilitate an offence, the offender is liable to a fine of not more than RM150,000.00 or a prison term of not more than 10 years.

Section 5 of the CCA: If convicted for unauthorised modification to contents, the offender is liable to a fine of not more than RM100,000.00 or a prison term of not more than 7 years.

(b) Improper use of network facilities: For eg. harassment and posting of offensive contents.

Section 223 of the Communications and Multimedia Act (CMA): Any comment, request, suggestion or any other communication which sounds obscene, indecent, false, menacing, or offensive in character with intent to annoy, abuse, threaten or harass another person. If convicted, the offender is liable to a fine of not more than RM50,000.00 or a prison term of not more than 1 year.

Do you remember Kiki Kamaruddin? She became a social media target when a video of her hitting an old man with a steering lock went viral. Some of the comments posted online were extremely harsh. Her car plate number was circulated and some were calling for others to name and shame her publicly. S223 of the CCA could be possibly used to prosecute those who posted these threatening comments on social media.

(c) Criminal intimidation:

Section 506 of the Penal Code: Whoever commits the offence of criminal intimidation shall be punished with imprisonment for a term which may extend to two years or with fine or with both; and if the threat is to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.

Section 507 of the Penal Code: Whoever commits the offence of criminal intimidation by an anonymous communication, or by having taken precautions to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment for a term which may extend to two years, in addition to the punishment provided for the offence by section 506.

(d) Harassment:

Section 509 of the Penal Code: Whoever, intending to insult the modesty of any person, utters any words, makes any sound or gesture or exhibit any object, intending that such word or sound shall be heard, or such gesture or object shall be seen by such person, or intrudes upon the privacy of such person, shall be punished with imprisonment for a term which may extend to 5 years or with fine, or both.

S509, however, tends to deal with offences that are sexual in nature. It has become one of the most widely used legislations by women's group to tackle sexual harassment.

S506 and 507 of the Penal Code relate to the act of criminal intimidation which isn't exactly bullying per se because it must show the element of threat while bullying does not always have to be a threat or intimidation.

From this, it would seem that S223 of the CMA and S509 of the Penal Code are the two legal provisions that can be potentially used to sanction bullying.

As such, do we then need a specific law to tackle cyber-bullying in Malaysia?

Let's look at what other countries are doing.

After what happened to Megan Meir, a federal bill titled the Megan Meir Cyber-Bullying Prevention Act was proposed in 2009 but it was never passed in the US Congress until today. Therefore, there is still no federal law against cyber-bullying in the United States of America today.

However, as of 2014, 20 states in the USA have passed state laws that include cyber-bullying to address the shortcoming in the federal law. Now, the interesting thing is that these laws do not criminalise cyber-bullying but instead encourage public schools to enforce policies against cyber-bullying.

The European Union's position in tackling cyber-bullying is to apply the laws under data protection and privacy. This means, punishment is imposed on those who possess or has control over unauthorised data. This is somewhat similar to our very own Computer Crimes Act but not the Personal Data Protection Act (PDPA) as the latter only applies to commercial matter.

It can be observed that there seems to be a reluctance for many countries to enact a law that specifically deals with cyber-bullying. Here are some of the possible reasons why.

1) Reluctance to criminalise children. Countries like the UK and the USA believe that instead of imposing a legal liability on children, the burden should lie on parents and educators to implement policies that will protect children from being bullied online.

2) Fear of violating First Amendment right in regard to freedom of speech in the USA. I urge you to read some of the cyber-bullying cases that were brought to court in the USA. You'll be as shocked as I have to learn how the American courts tend to judge in favour of free speech even though the speech may be ridiculously offensive and violent.

3) There are already existing laws on cyber-stalking, cyber-harassment, defamation and data protection that can be applied to cyber-bullying.

Knowing now that not many countries have laws that specifically address cyber-bullying, does Malaysia need one?

Before we answer this question, let us suppose that we do because defining the parameters of this specific law is what's most interesting about today's talk.

I had the help of an intern to do some research on cyber-bullying to prepare for this talk. He handed me a relatively well-researched paper; pages of statistics and laws around the world on cyber-bullying. At the end, I asked him the same question I'm asking all of us today, "Does Malaysia need a law on cyber-bullying?" and this is what he answered, "No, I don't think so. There are laws already in place to deal with harassment and there is not much difference between harassment and cyber-harassment. One is offline and the other online and bullying is a form of harassment."

Do you all agree with him? Well, I personally disagree because I think cyber-bullying is very different from bullying which means you cannot use the same law to tackle a different issue.

So, what are the differences between cyber-bullying and bullying?

1. You can be an anonymous bully online. This makes it difficult although not impossible for the authority to identify who the perpetrator is. Should the law include giving the authority the right to demand internet service providers to reveal the identity of an alleged bully? If yes, would that contravene privacy law?
2. Your anonymity means you can get away with your action easily, without repercussion and accountability. Most people believe that those who cyber-bully are less likely to say the same mean things they said online to their victims in person. Sarah Drew is a clear example. Should the law then impose a heavier sentence on cyber-bullies, creating a heavier responsibility on online users?
3. Your bullying words have the potential to spread wide, fast and in perpetuity online. Unlike conventional bullying where it is often contained at one spot for a specific period of time, a victim is able to detach him/herself from the bully once he/she leaves the scene of the incident. He/she is able to seek refuge at home, creating a distance between themselves and the bully. Cyber-bullying penetrates every space at any time, and the worst thing is, it doesn't disappear. It stays forever and ever in cyber-space. Must the law then look at how authority can demand the removal of a bullying content from the internet to minimise the potential of it spreading widely, quickly and remaining online forever?
4. Because it can spread wide, fast and in perpetuity, it means someone else (a stranger even) can join in the bullying with no repercussion or accountability. Now, what if you are not the bully, but you are merely passing on the bullying words by forwarding it to a friend or sharing it on your Facebook? Are you guilty of bullying as well? Should you?
5. What happens if the bullying is carried out across international border? Which legal jurisdiction applies and what if one country has a law against cyber-bullying while the other doesn't? Whose interest takes precedent?
6. Age of responsibility. At what age should a person be held accountable for cyber-bullying, particularly in this day and age when children as young as five years old are already capable of using the internet. Should they be criminalised for an action they may or may not understand, particularly if it is a result of the parents and educators' failure to monitor and supervise the child's behaviour properly. Then, should the parents and educators be held liable?

When you look back at the Computer Crimes Act, Communications and Multi-Media Act and the Penal Code, none of them address any of the challenges of cyber-bullying I've mentioned above.

I was told that victims of cyber-bullying can report to the Malaysian Communications & Multimedia Commissions (MCMC). The process is similar to lodging a police report. MCMC will investigate and then forward the report to the Deputy Public Prosecutor for them to decide whether to prosecute or not. I've not checked whether any report has been filed with the MCMC and if there is, it'll be interesting to find out whether there has been any

prosecution and if yes, under what law. Perhaps, you can do a bit of homework on this after the talk.

I'll end this talk by saying this. The whole purpose of my talk today is to show you that as law students, you must think about the challenges of cyber-bullying and question whether our existing laws are equipped to tackle these challenges. If they are not, how can we draft a law that will, a law that will genuinely serve the interest of the public, putting their rights at the forefront.

Drafting new laws are not easy and getting them passed in Parliament is even harder because of the politics behind it. And one last thing which we all should be mindful of is how a law can sometimes be applied to protect one right at the expense of another. Just like the earlier example I've given on online anonymity. In the hunt for a perpetrator, someone's privacy will be compromised, and what if the person turns out to be innocent? Therefore, it is our lawmakers' job and duty to ensure that our rights are delicately balanced when debating a piece of new legislation.

As for us, the most important thing is to constantly challenge ourselves not to look at a law from just a black and white point of view, but to question it from every angle as fervently as possible. I am not here to give you the answers and neither are your lecturers. We are simply here to provoke you to look at a law and think about it critically and I hope I have done that today.

Thank you.

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