

Applying the "Removing Content which Constitutes a Felony from the Cybernetic Space"¹ Bill on Cyberbullying²

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Cyberbullying or Cyber-harassment is a social phenomenon in which different technological online devices (such as smartphones) are used to besmirch, harass, intimidate, embarrass or attack an individual or a group of people. The use of media technologies, such as social online media networks, is done with the intent to hurt, usually premeditatedly, through hostile behavior such as sending slanderous texts, uploading malicious comments or uploading embarrassing photos online. The boundaries of privacy become blurry once users, especially teenagers, are encouraged by social media networks and its users to expose themselves in front of a large audience. Most of the warning signs that protect adolescents in the physical space, such as knowing the scope and length of exposure, do not exist in the virtual world. The incapability to control the data distributed online may lead to long-term damages.

Cyberbullying has gained headlines in Israel since David-El Mizrahi's suicide in 2011 after he was tormented online by his peers. Several discussions were carried in the Knesset regarding the matter and a committee, headed by former Supreme Court Judge Edna Arbel, was established to examine the limit between freedom of speech and the "freedom to incite". The committee has yet to advertise its conclusions, and the Knesset deliberation did not lead to actual results in the fight against cyberbullying.

Statistic that has been released during the past few years shows that the devastating effects of this phenomenon among teenagers is significantly expanding. As of 2015, one in every four Israeli teenagers is hurt by cyberbullying. Suicide attempts of teenagers abroad, and in Israel, which derives from cyberbullying, emphasize and enhance the need to act aggressively, in legal aspects as well as in non-legal aspects, against this phenomenon in an attempt to minimize its damages now and in the future.

In some western countries, such as New Zealand and most of the US states, specifically designed legislation targeted against cyberbullying was enacted. Israel has not enacted laws tailored to fight cyberbullying and the responsibility to take action

¹ 2016.

² Temporary name.

shifts between the students' parents, the educational system, the Internet Service Provider (ISP) and the legislature (the Knesset). We must ask ourselves if it is appropriate to create a new crime category targeted at behavior that constitutes as cyberbullying, in light of the phenomenon's unique traits and the fact that existing criminal legislation already refers to extreme cyberbullying cases, including, inter alia, the Israeli Prevention of Sexual Harassment law and the Israeli Anti-Stalking law.

This notion increases with the publication of the new Israeli bill "Removing Content which Constitutes a Felony from the Cybernetic Space", which offers a regulative tool in the form of an "injunction to remove content". This injunction will be awarded under two accumulative conditions – first, the publication of the content constitutes a felony; and second, the continuation of the publication constitutes a "real risk" to the safety of a person, the public safety or the state security.

Concerning the first condition, as mentioned, Israeli legislation addresses several felonies that are applicable, to a certain degree, on actions that constitute as cyberbullying. For example, a cyber-victim can turn to the Prevention of Sexual Harassment law; section 214 to the Israeli Criminal law, which sanctions publications of abomination; the Israeli Privacy law; the Israeli Anti-Stalking law; and the Israeli Defamation law. These laws will be applicable in extreme cyberbullying cases, but will not apply on vague cases when it is not appropriate nor efficient to define them as a new criminal category, which its purpose is to outlaw cyberbullying.

This stand derives from the significant difficulty of defining what constitutes as cyberbullying, and also due to the educational context in which cyberbullying is carried out – in schools among youth which are not completely aware of the gravity of their actions. This kind of criminal prohibition may trivialize criminal offences in a way that an angry message posted online may lead to imprisonment or fines. Extreme "traditional" cyberbullying behaviors, such as publishing sexual photos,³ are already a criminal offence. As a result, this course of action is not productive enough to take.

Concerning the second condition, due to the wide spread of cyberbullying among teenagers, in Israel and abroad,, and due to its devastating results on the mental and physical wellbeing of cyber-victims, we argue that the continuity of harmful

³ Prevention of Sexual Harassment (Amendment number 10), 2014.

publication online often constitutes, in practice, a "real risk" to the safety of a person, and in our social context, of a teenager. Nonetheless, the commentary remarks of this bill focus on incitement speech in the cybernetic space while emphasizing recent terror attacks in Israel, and the world, which uses the internet platforms to spread hateful messages. Despite this, it is my opinion that this bill is also applicable on criminal offences of cyberbullying by the interpretation of the phrase "real risk to the safety of a person" in accordance to the circumstances of extreme cyberbullying cases. This interpretation will enable the application of the regulatory tools this bill offers in an attempt to protect teenagers that are under repeated attacks by their peers in the cybernetic space, and will allow the removal of humiliating and threatening content.

Furthermore, section 3 of the bill offers a way to tackle the issue of anonymous free speech online, which was recognized as a constitutional right in the *Rami Mor*⁴ case. This section empowers the court with the authority – which has yet to be provided by law – to remove harmful content even if the identity of the wrongdoer is unknown. This authority is much needed in the context of cyberbullying, which is often carried out anonymously towards teenagers.

This article will focus on the criminal aspect of cyberbullying offences, once they rise to criminal acts as defined in Israeli legislation, even if the original legislative purpose did not refer to these kinds of online activities. I will examine how the instructions of this bill could be leveraged so they could provide these teenagers a much needed layer of protection and remedies to handle this phenomenon. This connection is not an easy one to make in light of the bills' commentary remarks, which emphasize the fact that this bills' main purpose is to prevent incitement via social media in a political-security context.

Eradication of cyberbullying seems impossible due to technological advancements and the reckless nature of adolescences. Thus, the keyboard becomes the new weapon in the cyberbullying arena. The collision between cyberbullying and the right for privacy and safety of any person, especially teenagers, will accompany us in the modern era. It is up to us to find the proper balance, which will protect the right of children to express their opinion up to the point where it creates greater negative value

⁴ CA 4447/07 Rami Mor v. Barak E.T.C the Company for Bezeq International Services Ltd. 63(3) PD 664 (2010) (Isr.).

than positive social good. This bill, which enables the removal of harmful content, will help achieve this goal in an efficient manner.