
**THE LAW, ONLINE HARASSMENT AND CYBERBULLYING: STRIKING A BALANCE
BETWEEN FREEDOM OF SPEECH AND WHAT CAN BE CRIMINALISED***

Abstract

The rise of digital communication technologies has amplified human expression, but it has equally opened unprecedented avenues for abuse, harassment, and psychological violence. Online harassment and cyberbullying now pose grave threats to personal dignity, mental health, and social cohesion. However, attempts to regulate harmful online conduct frequently collide with the constitutional guarantee of freedom of expression. This paper interrogates the delicate balance between protecting individuals from digital harm and safeguarding free speech in a democratic society. It examines Nigeria's legal framework - particularly the Cybercrimes (Prohibition, Prevention, etc.) Act 2015 - and critiques its enforcement vis-à-vis constitutional and international human rights standards. Drawing on comparative jurisprudence, the paper proposes a rights-sensitive model that criminalises conduct, not opinion, and that fosters accountability without suppressing legitimate expression.

Keywords: The Law, Online Harassment, Cyberbullying, Freedom of Speech, Crime, Striking a Balance

1. Introduction

The Internet has revolutionised public discourse, giving ordinary citizens the ability to publish, debate, and mobilise on a global scale. Yet, this empowerment has been accompanied by the proliferation of digital hostility - manifested through cyberstalking, trolling, revenge pornography, hate speech, and other forms of online harassment. These practices inflict severe psychological and reputational harm, particularly among young people and vulnerable groups. Many Nigerians have been charged for various offences under the Cybercrimes (Prohibition, Prevention, etc.) Act 2015 or its 2024 amendment, which criminalises certain online activities like cyberstalking, defamation through electronic communication, and transmission of false messages. The list includes former presidential candidate and activist Omoyele Sowore was charged by the Nigeria Police with multiple counts of cybercrime under the Cybercrime Act for allegedly calling the Inspector-General of Police an 'illegal IGP' in social media posts. He pleaded not guilty to the seventeen-count charge in Federal High Court, Abuja. One Wilfred Fajemisin was charged and convicted for online impersonation and related cybercrime offences at the State High Court in Ikeja, Lagos, after allegedly defrauding foreign nationals by impersonating himself online. He received a two-year sentence with an option of a fine. Human rights lawyer Dele Farotimi was arrested in Lagos in December 2024 and charged with defamation and cyberbullying under the Cybercrime Act after publication of his book, leading to his arraignment and subsequent bail. In Nigeria, the debate on how to address online harassment without infringing freedom of expression has gained renewed urgency. The question remains: at what point does speech become a crime? This inquiry lies at the heart of this paper. Its objectives are threefold: i) to analyse the extent to which Nigerian law protects individuals from online abuse; ii) to evaluate whether current statutory approaches align with international standards of free expression; and iii) to propose balanced legal reforms that uphold both liberty and responsibility.

2. Freedom of Expression in the Digital Age

Freedom of expression occupies a central place in Nigeria's constitutional democracy. Section 39(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) guarantees every person the right to freedom of expression, including the freedom to hold opinions and to receive and impart ideas and information without interference.¹ Similarly, Article 19 of the Universal Declaration of Human Rights (UDHR) and Article 9 of the African Charter on Human and Peoples' Rights affirm the right to freely express one's opinions.² These provisions collectively affirm that the liberty to speak, write, and publish is

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¹ Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 39(1).

² Universal Declaration of Human Rights, 1948, Art. 19; African Charter on Human and Peoples' Rights, 1981, Art. 9.

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fundamental to democratic participation and accountability. In the case of *Shaibu & Ors v Utomwen & Ors*³, the Court of Appeal stated above with regards to the foundation and purpose of the right to freedom of expression:

Now, by Section 39 (1) of the Constitution of the Constitution of Nigeria 1999 (as amended), it is provided as follows: ‘(1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.’ My lords, the right to freedom of expression and the press, as recognized and guaranteed by law, is geared towards the safeguarding of the right of the citizen to impart and receive ideas and information as permitted by law. It therefore, exist to protect the right to seek and receive information for the purpose of disseminating such information and ideas as well as the right to freely express opinions orally or through publications. The real essence of this right therefore, is to guarantee to each citizen the right within the purview of the law to express himself freely without unjustifiable interference. See *Ukegbu V. NBC* (2007) 14 NWLR (Pt. 1055) 551 @ p. 578.

In *Dauda v State*⁴, the Court of Appeal noted that the right to freedom of expression encompasses verbal expression, writing, publishing, and even sign language⁵. The Supreme Court had earlier opined in the Supreme Court in *Medical and Dental Practitioners' Disciplinary Tribunal v Okonkwo* (2001) 3 SCNJ 106 that;

The right to freedom of thought conscience or religion implies a right not to be prevented, without lawful justification, from choosing the course of one's life, fashioned on what one believes in, and a right not to be coerced into acting contrary to one's religious belief.

However, no right is absolute. Section 45 of the Nigerian Constitution allows derogation from this freedom in the interest of defence, public order, morality, or the rights of others.⁶ Nigerian jurisprudence underscores that expression may be lawfully limited where it incites violence, spreads falsehood, or unjustifiably infringes upon another’s reputation.⁷ In *Arthur Nwankwo v. The State*, the Court of Appeal affirmed that while citizens may criticise government, such criticism must not descend into defamation or incitement.⁸ The principle resonates with the broader philosophy that liberty must coexist with responsibility—a theme that becomes complex in the borderless, anonymous world of cyberspace.

3. The Menace of Online Harassment and Cyberbullying

Online harassment encompasses a range of hostile behaviours including intimidation, defamation, doxing, impersonation, and non-consensual sharing of images executed through digital platforms. Cyberbullying, a subset of this phenomenon, refers to sustained and deliberate acts of aggression intended to humiliate or distress others, often through social media or messaging platforms. In Nigeria, victims of online harassment include journalists, women activists, public officials, and private citizens. Amnesty International’s *Toxic Twitter Report* revealed that Nigerian women experience an alarming rate of gendered online abuse, ranging from threats of sexual violence to character assassination.⁹ The psychological toll of such acts can be profound including leading to anxiety, depression, and, in extreme cases, suicide. Yet, not every offensive statement constitutes a crime. The challenge for law and policy is distinguishing between *hurtful speech* and *criminal conduct*.

³ (2022) LPELR-58237(CA)

⁴ (2024) LPELR-62160(CA)

⁵ The Court was persuaded by the position of the learned author in *Constitutional and Migration Law in Nigeria* by Sebastine Tar. Hon (SAN) page 571.

⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 45(1).

⁷ See *Dokubo-Asari v. FRN* (2007) 12 NWLR (Pt. 1048) 320.

⁸ *Arthur Nwankwo v. The State* (1985) 6 NCLR 228.

⁹ Amnesty International, ‘Toxic Twitter in Nigeria: A Study of Online Abuse against Women’ (2022).

4. The Legal Framework Governing Online Harassment in Nigeria

Nigeria's primary legislative instrument on digital offences is the Cybercrimes (Prohibition, Prevention, etc.) Act 2015. Section 24 of the Act criminalises the sending of messages that are 'grossly offensive' or 'of an indecent, obscene or menacing character,' or that cause 'annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will.'¹⁰ Although designed to curb cyberstalking and harassment, this provision has attracted criticism for its vagueness and overbreadth. Terms such as 'annoyance' and 'ill will' are subjective, permitting arbitrary enforcement and chilling legitimate dissent.¹¹ As demonstrated above several Nigerians - journalists, activists, and ordinary citizens - have been arrested or prosecuted for social media posts critical of public officials, raising serious constitutional concerns. Other relevant statutes include: a) Criminal Code (Sections 373–381) and Penal Code (Sections 391–395), which penalise defamation and threats; b) Violence Against Persons (Prohibition) Act 2015, which prohibits stalking and psychological abuse, including through electronic means; and c) NITDA Code of Practice for Interactive Platforms (2022), which mandates online service providers to develop mechanisms for reporting and moderating harmful content. Despite this legislative framework, enforcement remains inconsistent. The problem lies not in the absence of law, but in the imprecision of definitions and the tendency to use cybercrime provisions as instruments of political control.

5. Freedom of Speech versus Criminalisation: The Jurisprudential Tension

The debate over criminalising online speech engages enduring philosophical questions about the limits of liberty. John Stuart Mill's *harm principle* posits that power should be exercised over an individual only to prevent harm to others.¹² In the context of online communication, the question becomes: when does expression cross the line from *offence* to *harm*? Excessive criminalisation risks suppressing legitimate criticism and investigative journalism. Vague laws allow authorities to treat dissent as 'cyber harassment.' This not only chills free expression but also undermines democratic accountability. Conversely, insufficient regulation enables toxic and violent online cultures to thrive unchecked. Comparative jurisprudence offers instructive lessons. In *Shreya Singhal v Union of India*, the Indian Supreme Court struck down Section 66A of the Information Technology Act for being unconstitutionally vague, observing that laws must be precise enough to avoid penalising innocuous speech.¹³ In the United Kingdom, Section 127 of the Communications Act 2003 criminalises 'grossly offensive' electronic messages but requires proof of intent and public disorder.¹⁴ In the United States, the First Amendment protects even offensive speech unless it poses a 'clear and present danger' or amounts to direct incitement.¹⁵ Meanwhile, South Africa's Cybercrimes Act 2020 criminalises malicious electronic communication but adopts detailed definitions and proportional penalties.¹⁶ These examples demonstrate that the balance between liberty and protection lies in *clarity, proportionality, and intent*, and not in suppressive breadth.

6. Balancing Tests and Judicial Safeguards

Courts play a critical role in mediating the boundary between lawful speech and criminal conduct. The legitimacy test requires that any restriction pursue a legitimate aim, such as the protection of rights or public order. The necessity and proportionality test demands that the restriction be the least intrusive means available to achieve that aim. Finally, the clarity test insists that the law must be precise enough for citizens to understand what conduct is prohibited.¹⁷ In evaluating cyber-harassment cases, courts should also consider *mens rea* (the intention behind the act). Distinguishing between deliberate harassment and careless

¹⁰ Cybercrimes (Prohibition, Prevention, etc.) Act 2015, s. 24.

¹¹ A O Onadeko and A F Afolayan, *A Critical Appraisal of The Cybercrimes Act, 2015 In Nigeria* (Being a paper presented at the 29th International Conference of the International Society for the Reform of Criminal Law (ISRCL) held at Halifax, Nova Scotia, Canada July 24 – 28, 2016). See also A B Aliyu, *Analysis Of Cybercrimes Legislation and its Impact on Digital Rights in Nigeria*, LLB Long Essay submitted to Faculty of Law, Ahmadu Bello University Zaria

¹² J S Mill, *On Liberty* (London: Longman, 1859), p. 23.

¹³ *Shreya Singhal v. Union of India* (2015) 8 SCC 479.

¹⁴ Communications Act 2003 (UK), s. 127.

¹⁵ *Schenck v. United States* (1919) 249 U.S. 47.

¹⁶ South African Cybercrimes Act 19 of 2020, ss. 14–18.

¹⁷ UN Human Rights Committee, General Comment No. 34 on Article 19 of the ICCPR (2011).

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expression prevents criminal law from punishing mere negligence or emotional expression. Moreover, judicial oversight is essential to guard against the abuse of prosecutorial discretion. Criminalisation should target behaviour that causes demonstrable harm - such as threats, blackmail, or non-consensual distribution of intimate materials - rather than speech that merely causes discomfort or disagreement.

7. Policy and Regulatory Recommendations

First, legislative precision is imperative. Section 24 of the Cybercrimes Act should be amended to remove ambiguous terms like ‘annoyance’ and replace them with clearly defined offences such as *threat*, *stalking*, or *non-consensual image distribution*. Criminal liability should be anchored on demonstrable harm and specific intent. Second, Nigeria should adopt a Digital Rights and Responsibilities Charter modelled after the African Union’s Convention on Cyber Security and Personal Data Protection (2014), outlining both the freedoms and obligations of digital citizens. Third, regulators should emphasise education and restorative justice. Not all online conflicts require imprisonment; some are better addressed through mediation, apology systems, or counselling. This approach aligns with restorative justice principles and reduces the burden on criminal courts. Fourth, digital literacy and ethics education should be integrated into school curricula and public campaigns to promote empathy and responsible online conduct. Lastly, a multi-stakeholder governance model is needed - bringing together government agencies, social media companies, civil society, and academia to develop adaptive, rights-based responses to emerging cyber harms.

8. Conclusion

Freedom of speech is the lifeblood of democracy, yet like all liberties, it must coexist with respect for human dignity. The Internet magnifies both the promise and the peril of expression. A legal order that fails to protect individuals from online harassment denies them substantive equality and security. Conversely, a system that criminalises dissent in the name of civility endangers liberty itself. The proper balance lies in criminalising conduct, not opinion, focusing on intent, harm, and proportionality. The law must punish harassment that violates autonomy and safety while preserving the vibrant marketplace of ideas essential to progress. As Nigeria navigates its digital future, the goal should not be to silence speech but to civilise it, to ensure that our online spaces remain arenas of dialogue, not weapons of destruction.