**CYBER STALKING: A POTENT TOOL FOR CRIMINALIZING FREE SPEECHE**

**Introduction:**

It is a disturbing commentary on our legal system that cyber stalking has endured as a potent tool. used by law enforcement agencies and affluent/privileged citizens, to harass, intimidate and criminalise free and uncomplimentary speeches instead of resorting to defamation suits as properly envisaged by law. With the emergence of computer and internet in the cyber world, there was also emergence of cyber related crimes such as identity theft, data breaches, computer viruses, scams, and expanded upon in other malicious acts. This led to enactment of legal regimes to regulate cyber operations and curtail cybercrimes.

**The Old Trend:**

Nigerian came up with the Cybercrimes (Prohibition, Prevention, Etc) Act of 2015 to primarily prevent, detect, and punish cybercrimes in Nigeria and to also promote cyber security and protect citizens' privacy rights. The major snag in the legislation was section 24(1)(a) and (b) of the Act which nebulously defined cyber stalking as follows:

***Before this amendment, these provisions defined cyberstalking to include materials that were grossly offensive, indecent, obscene, of menacing character or sent to cause annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, hatred, ill will and needless anxiety.***

This hazy, vague and cloudy definition of cyber stalking, that simply means the use of the internet or other electronic means to stalk or harass an individual or organization (according to Wikipedia), became an official format through which free speech and expression are impeded and individuals, especially journalists and activists, are harassed and intimidated. Every offensive or unfair expression/messages could be deemed to be cyber stalking or criminal defamation fetching the accused person some days in the detention before bail is granted. A non-governmental agency, the [Committee to Protect Journalists](https://www.theafricareport.com/346945/press-freedom-arrested-handcuffed-and-persecuted-journalists-are-under-threat/) asserted that the primary tool used to harass journalists is the 2015 Cybercrime Act, which has been cited in the prosecution of at least 25 media professionals since its inception. The abuse of the provision was horrifying.

In 2019, an attempt to have the section expunged for being inconsistent with sections 36(12) and 39 of the Constitution of the Federal Republic of Nigerian (as altered) was unsuccessful. In the case of OKEDARA v. A.G FEDERATION (2019) LPELR-47298(CA), the Court of Appeal in upholding the constitutionality of the infamous section (provision) held, amongst other things, that the section is not in conflict with the provisions of the Constitution and therefore permissible in a democratic setting.

It took the dedicated efforts of the Socio-Economic Rights and Accountability Project (SERAP) to challenge the provisions of the section at the Court of Justice of the regional Economic Community of West African States (ECOWAS). In 2022, the regional Court gave its reformative and far-reaching ruling nullifying the Constitutionality of the section. The honouirable court ordered Nigeria to amend the said section 24 of the Cybercrime (Prohibition, Prevention, etc.) Act 2015 to conform to international human rights treaties it has ratified, in particular the African Charter on Human and People’s Rights (ACHPR) and the International Covenant on Civil and Political Rights (ICCPR).

**The New Trend:**

In compliance with the 2022 ruling of the ECOWAS Court, section 24(1) (a) and (b) was amended in the Cybercrimes (Prohibition, Prevention, ETC) (Amendment) Act, 2024. Under the extant Act, the debilitating definition of cyber stalking have been diluted to read thus:

***Any person who knowingly or intentionally sends a message or other matter by means of computer systems or network that –***

* ***is pornographic***
* ***he or she knows to be false, for the purpose of causing a breakdown of law and order, posing a threat to life, or causing such message to be sent,***

Though amendment of the provision fell short of expected restriction of cyber stalking to strictly cyber related crimes, the amendment went a long way to de-criminalise expressions or materials which were grossly offensive, indecent, obscene, of menacing character or sent to cause annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, hatred, ill will and needless anxiety. This portends that all such expressions or materials which hitherto constituted criminal acts are no longer criminal. The amendment has equally narrowed down the definition of the offence of cyber stalking which implies that some acts that previously constituted cyber stalking would no longer be considered as such.

Presently, only expressions or messages sent by means of computer systems or networks which is pornographic; or known to be false for the purpose of causing a breakdown of law and order, posing a threat to life or causing such message to be sent are now considered to amount to offence of cyber stalking by virtue of the amended Act. In other words, the ingredients that must be contained for a message to amount to cyber stalking are: either a pornographic message/content or, it is a false statement made with the purpose of causing a breakdown of law and order or posing a threat to life.

Despite this plain definition of cyber stalking, security agencies and highly placed individuals still deploy provisions of the section as a potent tool to intimidate and suppress free and uncomplimentary speeches or remarks which were not made for purpose of causing breakdown of laws or orders or posing a threat to life to anyone. Often, the criminal justice system is assailed and overburdened with varying pseudo charges of cyber stalking that would conveniently fit into civil defamation suits. The unfortunate trend in these pseudo charges is that citizens’ rights and liberties are grossly infringed and abused upon in the process of deploying instruments of State to assuage purely civil wrongs. In one of such cases in Nigeria, an affluent ‘nominal complainant’ was boasting publicly of returning the ‘accused person’ to prison at his volition.

**The Future Trend:**

Our courts should be strict in interpreting the provisions of the section against anyone relying on them to curtail right to free speech. As a way to protect citizens’ rights and liberties, bails should be granted on self recognizance or on most liberal terms in-favour of accused persons charged under the section. Justice stakeholders should up campaigns against abuse of rights though the use of the section as currently being witnessed. A push for a further amendment of the said section to further water down its effects so as to guide against future abuse. Finally, persons unsuccessfully prosecuted or abused under the section should seek for damages in civil actions for acts of malicious prosecutions.

**Obioma Ezenwobodo LL.M**

Managing Partner Resolution Attorneys &

Executive Director Policy and Legislative Advocacy Network.

obiomadan@gmail.com