Criminal Law as a Tool for Dealing with Online Violence among Youth

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This article seeks to examine whether criminal law is equipped to deal with the phenomenon of online violence among youth. In many cases, criminal law is not the optimal way to deal with online violence; therefore, it should only be used as a last resort, while being particularly cautious, especially when violence is not the result of a "criminal" nature but rather is the nature of the internet, which leads normative minors to carry out prohibited acts. The preferred means is to deal a-priori with the phenomenon, namely, to focus on education and prevention rather than punishment after the fact. This is a social issue with utmost importance, which parents, children, and educators should be aware of.

Keywords: Bullying, online violence, youth, minors, cyber, criminal law, education, prevention

Introduction

Protection of children and teens from online violence should be carried out on several levels, first and foremost, at the educational level, with activities directed at teachers, children, and parents. New methods and means of dealing with this phenomenon need to be developed, and the entire framework around the youth—family, friends, and educational staff—should be involved in creating and implementing programs to address online violence. The case of online violence enables and invites a particularly close cooperation between educational staff and parents.

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It is important that both educational staff and parents get to know and understand the online environment and its inherent dangers. It should also be remembered that violence that begins in school often continues online while bullying and violence in the virtual sphere often spill into the physical school environment. School staff are therefore required to be vigilant beyond school hours. Furthermore, conversations should be held with children in order to raise awareness to this phenomenon, to make them understand the consequences of their actions, and to encourage them to seek help if and when it is needed.

Online violence also needs to be tackled at the level of public regulation. Regulation should establish the rules of the game and the means of protecting minors who stand to be harmed by violating those rules. In addition, voluntary self-regulation on websites and social networks is needed.

Over the past decade, internet use has expanded to such a degree that it has become an indispensable part of our lives on many levels: on the professional level, in our conduct as consumers, in our contact with the authorities, as our source of knowledge, and also as a social space for managing relationships. Using social networks has become most popular among youth in Israel and around the world. Research in the United States and Europe shows that 60–65 percent of children ages nine and over use social networks and that rate rises to over 80 percent among teenagers. A study conducted in Israel by Bezeq Telecommunications in 2018 showed that 95 percent of Israeli teenagers between the ages of thirteen and eighteen use WhatsApp; 88 percent are active on Instagram; and 65 percent are active on Facebook. In addition, 43 percent of parents did not restrict their children's social media use during that year, whereas in the previous year, 2017, 50 percent of parents limited social media use to two hours a day.[1]

The internet, and especially social networks, has become an integral part of the day for most teenagers and even for younger children. The use of social networks by minors has many advantages: learning and expanding horizons, exposure to new content and new worlds, creativity and self-expression, and even for building social connections and developing a sense of belonging. However, the internet can also expose minors to dangers: It can be a source of negative influence, dangerous behavior, overstepping of boundaries, and

1 "Report on the Digital Life 2018," Bezek Telecommunications, https://www.bezeq.co.il/media/PDF/doh_2018.pdf [Hebrew].

exposure to abusive and harmful content. The internet's negative influence on minors is a very broad topic and can be discussed in many contexts, from the exposure of minors to pornographic content to online solicitation of minors by sex offenders seeking to exploit them. This article will address only one negative aspect of the exposure of minors on the internet, namely, that of online violence among minors.

Violent conduct on the internet presents a host of challenges, among them educational, social, and legal that the criminal law is required to address. Below, we will explore the phenomenon of online violence, focusing on those cases where both parties—the assailant and the victim—are minors. The discussion will revolve around the question of whether the Israeli criminal law is equipped to deal with this phenomenon.[2]

Definition

"Online violence," also known as "cyberbullying,"[3] can be defined as the use of information and technology by an individual or a group in order to hurt others through repeated, intentional, and aggressive behavior. Online violence is a new category of violence, inflicted through a variety of electronic devices, such as smartphones and computers, and expressed mainly on social networks, such as WhatsApp, Facebook, Instagram, and Snapchat. Online violence follows a person everywhere—in the minor's home, at school, at a party, or while out with friends. It may include harassment; gossip; messages of an insulting, degrading, and even threatening nature; impersonation; public distribution of material related to personal privacy; extortion; and use of webcams to transfer abusive content, such as photos and videos. The person inflicting the online violence may know the target person in "reallife" or might only know the target in the "virtual" online sphere.

The definition of online violence as "intentional and aggressive with the aim of harming others" creates difficulties, especially when the discussion concerns minors. Elsewhere, I have stated that "while we are mostly talking

2 In a different article, I extensively addressed the issue of violence on the online playground, emphasizing the responsibility of content providers and site operators for incidents on their turf. See Limor Ezioni, "Bullying on the Online Playground—Responsibility of Content Providers and Website Operators for Incidents on their Turf," *HaMishpat* 16 (2013): 463–513 [Hebrew].

3 I prefer to employ the term "online violence" rather than "cyber bullying," since the term "bullying" has a connotation of horseplay committed by minors as part of their youthful exuberance, while the acts I will discuss here are in no way trivial.

about the use of words and images, the boundary between simple harassment, which unfortunately is a characteristic of relationships in general and among children in particular, and between 'intentional and aggressive behavior aimed at causing harm' is unclear. Furthermore, behavior can also be ignoring or ostracizing from a particular social space. Phenomena such as boycotting [a person] or preventing [them] from participation are extremely powerful."[4] The difficulty in defining the phenomenon also creates problems with properly handling it, yet it should not be inferred from this difficulty that criminal law is unable to deal with the cases that constitute an offense.[5]

Ways of Expressing Online Violence Among Minors

The range of violent behaviors is endless, limited only by the imagination. The most common and simple behavior is sending a large number of emails, text messages, through posts on social networks such as Facebook or WhatsApp to a person who is not interested receiving them.[6] The content may include threats to cause harm, sexual references, hate speech, and so forth. The type of online violent behavior among minors can be categorized as follows:

4 Ezioni, "Bullying on the Online Playground," 470.

5 Moreover, in many rulings in recent years, it seems increasingly understood that as the virtual environment has become an indispensable part of social life, crimes committed within this environment must be recognized and severely punished. For example, Justice Daphne Barak-Erez remarked that "when considering the new ways of connecting people, using the various means made available to us by modern technology, an obscene act can be committed through the use of emails, images on a computer, and more. In a world in which it is possible to maintain a connection between people through the use of wires, frequencies, and electronic messages, an obscene act can be committed against a 'person' through those very means." See 7225/11 *John Doe v. State of Israel* (published in Nevo, January 24, 2013).

6 An example of an extreme case is that of David-El Mizrahi, who committed suicide after being abused on Facebook. The abuse included obscenities, humiliation, and harassment. Another example is that of Rebecca Ann Sedwick, an American girl who committed suicide after receiving hate messages on social networks from two girls who goaded her into committing suicide. For further cases, see Anat Lior, "Cyber Bullying—A Wake-up Call for the Israeli Legislator," Law and Business Website, https://idclawreview.org/2013/11/17/blogpost-20131117-lior/.

- *Harassment*—repeatedly sending numerous and abusive messages (profanities, insults, threats) to the victim through instant messaging, mobile phone messages, or through posts or messages on social networks.[7]
- *Raging*—abusive, crude, and insulting exchanges in discussions on forums, in chat rooms, and in WhatsApp groups. Those involved are usually drawn into aggressive behavior and the atmosphere becomes combative and offensive.[8]
- *Defamation*—disseminating mendacious stories and false information about a person to many acquaintances. The aim of defamation is to destroy the reputation of the victim as well as the victim's connections and social standing.
- *Masquerading*—using the victim's personal details in order to impersonate the victim and carry out actions under the victim's name. For example, a boy goes online under another boy's name and sends an abusive email to several friends.[9]
- *Outing and Deception*—exposing intimate and private information about a minor. For example, exposing an anonymous blog and identifying it with a specific person (a phenomena typical to content connected to sexual tendencies), or disseminating personal photos and videos on the internet.[10]

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7 According to criminal appeal 9152/06 *John Doe v. State of Israel* (published in Nevo, February 19, 2007), which describes a case in which minors harassed another minor, inter alia, through threatening voicemail messages and via the computer; and according to appeal of criminal sentencing 259892-01-11 *Huri v. State of Israel* (published in Nevo, February 9, 2011), in which the appellant and the complainant met on an online dating site and after several dates, the complainant sought to terminate the relationship. As a result, the appellant began to harass her by calling her numerous times and cursing her.

8 It is noteworthy that computer combat games often allow harassment of a minor's virtual character, such as by ganging up against the character or attacking the character which deviates from the official goal of the game.

9 According to criminal motions 4820/15 *State of Israel v. John Doe* (published in Nevo, July 14, 2015), in which the appellant broke into the Facebook account of a minor in order to liaison with female minors.

10 Criminal appeal 2656/13 *John Doe v. State of Israel* (published in Nevo, January 21, 2014), where it is stated that the appellant photographed minors without their knowledge during correspondence between them and threatened to publish the photos if they did not do as he asked. For more on the dissemination of photographs among children and teenagers on the internet, see Eti Weissblai, "Dissemination of abusive photos on the internet by children and teens," Knesset, Research and Information Center, 2010 [Hebrew]. See also criminal appeal 6357/11 *Braverman v. State of Israel* (published in Nevo, December 26, 2013), where the appellant was convicted for several sex offenses against minor teenaged girls, whom he met on social networks and seduced.

- *Exclusion*—internet boycott, in which an entire group ostracizes a minor from social arenas. For example, an entire class boycotts a child or does not accept the child's Facebook friendship requests.
- *Stalking*—tracking a minor in order to obtain details and personal information for the purpose of hurting, blackmailing, or terrorizing the person.
- *Threatening* —of all different types within a personal content, such as threats of self harm or to the life of another person. Online threats can be made via instant messaging programs, email, social networks, and more.[11]

Special Characteristics of Online Violence

"The computer screen, which is the tool that visually displays the electrical signals received from the computer, largely reflects the bipolar character of the internet. The transparent glass at the front of the screen opens before us a window to broad and rich information and to new worlds. The back part of the screen, on the other hand, is opaque and sealed and can resemble the darkness in which we find ourselves in relation to the true identity of the people on the other side of the network."[12]

The use of the internet has its own unique traits, as does the violence committed on it.[13] Anonymity enables a minor to share with others or to reveal personal details about another without being exposed. Most victims of online violence are not familiar with their assailant, who is able to maintain a false identity and remain anonymous.[14] Absolute anonymity releases inhibitions, and it even awakens evil in some people. Moreover, absolute anonymity can lead to exaggerated expression of negative feelings, not taking into account the norms and limitations of the "real world."[15]

11 Criminal appeal 538/13 *Sabah v. State of Israel* (published in Nevo, December 26, 2013), in which the appellant threatened several minors that if they did not fulfil his demands he would harm himself and tell their families about their sexual deeds with him. He even threatened to commit suicide.

12 Justice Hendel in criminal appeal 2656/13 *John Doe v. State of Israel* (published in Nevo, January 21, 2014).

13 Idit Avni and Avraham Rotem "Cyberbullying," *IAN Ethics,* 3 (2009) [Hebrew], ianethics.com/wp-content/uploads/2009/10/cyberBullying_IA_oct_09.pdf.

14 Wannes Heirman and Michel Walrave, "Assessing Concerns and Issues on the Mediation of Technology in Cyberbullying," *Cyberpsychology: Journal of Psychosocial Research on Cyberspace* 2, no. 2 (2008), https://cyberpsychology.eu/article/view/4214/3256.

15 "Many studies conducted in the United States and the European Union indicate that there is a high chance that youth with a social network profile events will be involved in incidences of online abuse. Studies show that the highest rate of online abuse, some 41%, is among girls aged 15–17." See Lior, "Cyber Bullying—A Wakeup Call for the Israeli Legislator."

Furthermore, in the real world, violence and harassment occur in a circumscribed domain—within school boundaries, among friends, in after-school activities—while the internet allows for a wide and rapid circulation to a large number of users. Thus, youth can use the internet to mock and insult other youths. For example, in one case, a minor girl was abused by another girl on various social networks. Among other things, the assailant disseminated pornographic videos with the girl's head superimposed in a Facebook group of some 90,000 youths, resulting in profanities, threats, and abuse from youth who did not even know the victim.[16] Those involved in online violence have the ability to circulate messages, photos, or any other material to a large and diverse audience, and the assailant is often unaware of the snowballing effect that he has caused.[17]

The phenomenon of online violence is also unique because of the accessibility of the internet anywhere and any time, thus completely blurring the boundary between the whereabouts of the abuser and the victim. In the past the victim had refuge from harassment in thier home, today, internet harassment leaves the victim with nowhere to escape, as the harassment penetrates into the private space.[18]

Dealing with the Phenomenon on the Level of Criminal Law

Despite existing restrictions on the use of criminal law in dealing with online violence, the criminal law may be the appropriate arena for dealing with some cases. In general, these cases can be divided into two types: The first includes cases where it is obvious that if the violence occurred in the real world rather than the online world, it undoubtedly would constitute a criminal offense. A striking and clear example is photographing a minor in an intimate situation without the minor's knowledge and consent and subsequently circulating the photograph via the internet. The second type

16 For more on this subject, see Liron Shamam, "The Writing on the Wall," *Mako*, April 11, 2013 [Hebrew], www.mako.co.il/nexter-weekend/Article-6554514438eed31006.htm.

17 Michele L. Ybarra and Kimberly J. Mitchell, "Online Aggressor / Targets, Aggressor and Targets: A Comparison of Youth Characteristics," *Journal of Child Psychology and Psychiatry* 45, no. 7 (2004):1308–1316.

18 Janis Wolak, Kimberly J. Mitchell, and David Finkelhor, "Does Online Harassment Constitute Bullying? An Exploration of Online Harassment by Known Peers and Online-Only Contacts," *Journal of Adolescent Health*, 41, no. 6 Supplement (December 2007): S51–S58.

involves violent acts between minors that are unique to the virtual world but the consequences (or potential consequences) thereof are particularly grave and thus require a penal response.

In Israel, there is no specific legislation prohibiting online violence (cyberbullying), and this applies all the more so to criminal legislation. In the absence of a special provision, acts performed in the virtual environment must be examined in the criminal context—whether the elements of *actus reus* and *mens rea* have been fulfilled. Nonetheless, Israel does have legislation that deals with criminal prosecution of a minor who had circulated videos of a sexual nature. In 2014, a new article was added to the Prevention of Sexual Harassment Law,[19] dubbed by the media as "the Videos Law." The article states that sexual harassment will also include the "publication of a photograph, film or recording of a person, which focuses on his sexuality, in circumstances in which publication may humiliate or denigrate the person, and in which the person has not granted consent for publication." Specifically, the amendment to the law is intended to deal with the posting of images, videos, or recordings of a sexual nature on social networks and via mobile messaging apps. The article states a five-year sentence for this offense. Guidelines published by the attorney general state that there is tangible public interest in enforcing the law against perpetrators, even in cases in which the suspects are minors and do not have a history of criminal behavior.[20] This is due to the serious harm caused by the offense and its far-reaching consequences for the victims and the need to make the criminal prohibition clear to youth.

In the case of online violence, law enforcement authorities have to deal with the phenomenon using the tools currently available in the criminal law. This requires the major actors involved—the police, the state prosecutor's office, and the courts—to exercise "creative caution"; that is, they must examine whether a particular act—only in new form—falls within the definition of an existing offense, or whether it breaks new ground and cannot be prohibited by existing criminal law. At the same time, these actors must exercise a degree of caution when applying criminal law to minors. This "creative caution" is a necessity for two main reasons: First, it is necessary to prevent the creation of an extra-territorial space on the internet where

19 Prevention of Sexual Harassment Law, 5758–1988.
20 State Attorney's guidelines 2.29

minors are abandoned and subjected to acts of violence by their peers. As described above, online violence breaks down the protective networks that defends minors, violates their private lives, and penetrates their homes, which are supposed to be their fortresses, and inflicts damage on several levels. The fact that children are unprotected inside their own homes and harmed in their own rooms, even under the watchful eyes of their parents, and that the harm caused is difficult to assess is not easily digestible. Minors should not have to walk about in fear, in neither the corridors of schools nor the internet. Therefore, even if certain difficulties may arise in proving that harm was done or in locating the assailants,[21] existing legal tools are sufficient in overcoming those difficulties, and it is imperative to act "creatively" in order to protect minors. The second reason "creative caution" is required is that this is a new issue, which is not yet completely understood; moreover, extra caution is required when dealing with minors and even more so when prosecuting them.

The question of the applicability of criminal norms in the virtual arena is a major issue; in many cases, the phenomenon of online violence does not, in fact, bring those norms into play. While in many cases, virtual offenses are committed online, obvious offenses are also committed in the real world but are broadcasted online. A simple example is that of a minor posting pictures of another minor in an intimate situation (for example, undressed) without their consent on a social network. In this case, while the photo was not printed and handed out to the minor's classmates, nature and substance of the act—publication that violates privacy without consent—does not change.

Some of the acts that constitute online violence are carried out in the real, physical world, and the internet serves merely as a means to immediately and simultaneously broadcast the act to the public; in these cases, the acts are not virtual acts, so the media through which they are distributed is of no importance. This becomes relevant primarily with regard to acts of online violence that violate privacy, but not only in such cases. One example is a situation in which several minors are holding a conversation in a chat room (or a WhatsApp group) and the inner dynamics of the group cause threats to be focused on one of the minors in the group. Unfortunately, minors threatening each other is commonplace both in the real and the virtual world,

21 One must bear in mind that anonymity on the internet is, in most cases, a mere semblance, and that most communications can be monitored by court order.

so the test should be the same in both worlds: Is it a "threat" as defined by law, and does it constitute a criminal offense that merits prosecution? The internet in this instance serves as a conduit for transmitting the threats instantly and simultaneously.

When police and prosecutors are informed about a suspected felony committed by a minor on the internet, they must ask themselves honestly: What is the difference from our perspective if the violent act was carried out on a social network, email, or telephone? The determining factor is not the mode of operation—virtual or real—but rather the nature of the act. When the essence of an action is a threat, a publication that violates privacy, or a provocation that borders on harassment, the medium makes no difference.

Actions performed by minors (for example, photographing a minor in his/hers private domain or hacking a minor's email) often have a tangible expression in the real world. This further reinforces the conclusion that there should not be a dichotomous separation between the real and virtual world. Furthermore, the connection between virtual behavior and damages in the real world is often seen in many areas. For example, a threat made on a social network can lead to a physical assault on a minor, and repeated harassment on the internet can lead a minor to commit suicide.[22]

The vast majority of abusive behaviors included in online violence seem to meet the definition of existing criminal law, and it may be inappropriate to separate between abuse online and offline. However, caution must be exercised before turning to criminal law in these cases. The *mens rea* that characterizes youth when engaging in online violence is unclear; sometimes it constitutes indifference to the hurt caused, and sometimes the injury results from recklessness as the boundary between social pressure, amusement, and the whims of youth on one hand and malice and the intent to cause harm on the other is blurred. A child posting something is not always aware to how widely his or her words can be circulated nor of their destructive power. Furthermore, the plethora of available media, together with the nature of social contacts between youths, means that the imposition of criminal liability may be disproportionate in some cases, even if we are talking about defending the same protected values—the reputation and the physical and mental health of the victim. The disproportionality stems from the fact that the youths may

22 See in other contexts criminal appeal 512/13 *John Doe v. State of Israel* (published in Nevo, December 4, 2013) Assaf Harduf, *Online Crime* (Nevo Publications, 2010) [Hebrew].

have acted on a whim and without being fully aware of the consequences of their actions. Furthermore, even if there are destructive consequences, it is possible that the assailant's original behavior was negligible but was blown out of proportion, due to widespread and rapid exposure to the action on the internet, as well as the provocative response.

It is relatively difficult for minors to commit the majority of criminal offenses in the real world, so the normative limits of permissible and prohibited, good and bad are thus more obvious. These boundaries, however, are much more blurred in the online environment, and as a result, it is more difficult to determine whether to conduct a criminal prosecution. Yet this does not mean that the online arena has been forfeited due to these difficulties; one should remember that committing criminal acts via email or on a social network, rather than face-to-face, does not diminish their severity, and to some extent this can even exacerbate them.

Conclusion

A minor's home is his castle and his mobile phone or computer are its extensions. A technological incursion into a minor's home does not necessarily have to be physical, and it can also be protected by the relevant criminal law. At the same time, defendants, both minors and adults, should not be allowed to take advantage of the accessibility and ease by which acts can be committed via the internet, which most likely they would not dare to commit face-to-face, as they would then constitute a criminal offense. The internet provides a sense of greater distance and protection when compared to a face-to-face situation and enables minors to traverse boundaries. The best way to prevent this is through education as to why this constitutes crossing boundaries and why it should not be done. However, criminal law should not ignore and enable the traversing of boundaries, and when necessary should have its say. Minors should not be allowed to commit acts that they would hesitate to commit in the real world, just because the internet provides them with supposed anonymity to conduct manipulations at the expense of their friends' emotional well-being and mental health; the internet must not become a sanctuary for committing offenses under the cover of anonymity and with the absence of physical contact. This is an obscene and unacceptable phenomenon that deserves more stringent criminal enforcement.

The distinction between words and deeds and between virtual behavior and real behavior is becoming more blurred. We have to be vigilant against creating a reality in which the virtual world, in the absence of criminal enforcement, provides a sanctuary for real criminals. The idea that violence must include physical contact needs to be abandoned. Minors can behave violently even without physical contact.

Furthermore, minors commit acts in the virtual arena that adults may be hesitant to commit, and there is often a need for an unequivocal response within criminal law against these deeds. Existing criminal legislation should be applied, with the requisite changes, in a way that not every obscene publication on the internet constitutes grounds for prosecution, such as in the case of defamation or violation of privacy. While the unique features of the internet discourse should be recognized, existing means should not be given up on *a priori* simply because of the challenges that this discourse entails.

The challenges that the virtual world poses require that law enforcement authorities adopt a cautious approach. In such cases, there may be room to request an opinion from the juvenile probation service prior to the indictment of a minor, regardless of age, in order to obtain a broader picture regarding the minor himself. Another possible solution is that the indictment of minors in such cases should be the responsibility of separate units within the police and the state prosecutor's office. Thus, a broad perspective on the issue will be formulated and application of criminal law will be fair and equitable. Furthermore, the tools that frequently serve minors could easily turn their conduct into such that could lead to imposing criminal responsibility—a situation the legislature surely did not imagine when attempting to define the violation of privacy or harassment. Giving this issue to an overall body that has a broad view will enable an ongoing and critical examination of whether criminal law is the appropriate tool to address this issue.