

Applicability of Civil Remedies in Redressing the Victims of Online Harassment

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ABSTRACT

Online harassment has undoubtedly become a menace that has severe negative impacts on victims and society at large. Owing to its critical nature, jurisdictions around the world have utilized different branches of law such as criminal law, tort law and intellectual property law to redress the victims of online harassment, as well as to penalize its perpetrators. This paper attempts to analyse whether *actio injuriarum* under the law of delict could be employed as a corrective justice mechanism to provide redress to victims of online harassment, considering the severe emotional distress they undergo due to harm caused to their dignity, reputation and privacy. The paper adopts the view that *actio injuriarum* provides an effective remedy to plaintiffs for impairment of dignity, person and reputation, caused by insult. Thereby, it analyses how *actio injuriarum* could be utilized as a general remedy for sentimental damages suffered by the victims of online harassment. It concludes with the finding that the principles and elements of *actio injuriarum* are broad enough to redress the victims of online harassment.

Keywords: *actio injuriarum*, online harassment, injury to dignity, defamation, corrective justice

Introduction

In this digital world, an inseparable connection between humans and technology is a constant. Technology has surged into modern day businesses, communities, and the lives of individuals, altering the means of communication, study, work, and interaction. Covid-19 pandemic not only proved the same, but pushed it to an extent beyond imagination. Undoubtedly, it is the technology that enabled human connections

with the outer world during these difficult times of the pandemic. Unfortunately, reliance on technology and its advancements has not only brought benefits but has become a medium for various forms of online misconducts such as harassing, intimidating, stalking and extorting individuals or group of persons.

Existing literature uses the umbrella term ‘online harassment’ to refer to a series of

abusive online conduct. This is also known as cyber harassment.¹ Moreover, many studies have been carried out to assess the nature, prevalence and impacts of online harassment and these studies reveal online harassment to be a growing menace across the world that causes serious harm including severe emotional distress, loss of employment, physical violence and even death.² The grave nature of online harassment has compelled legal systems around the world to employ various mechanisms to combat this threat effectively, to minimize and eventually eradicate it, and to provide redress to its victims. Moreover, existing literature discusses the possibility of using different branches of law such as criminal law, intellectual property law, tort law and the law of delict to regulate online harassment.³ In light of the above, this paper endeavours to analyze whether *actio injuriarum* under the law of delict could be utilized as a corrective justice mechanism to compensate the victims of online harassment in Sri Lanka.

An Overview of Online Harassment

As complex as the incidents of online harassment could be, it is also complicated to provide a uniform definition as to what constitutes 'online harassment'. Among various reasons, the complexity in the forum in which it occurs, 'online harassment' being relatively a new phenomenon and the absence of a precise terminology to define the term 'online harassment', has led to various definitions and interpretations in relation.

Based on various definitions available in the literature and particularly those by Nancy S. Kim⁴, Burke Winkleman⁵, Laura Macomber⁶, this paper identifies online harassment to be a catch all term referring to any intentional conduct that is committed via network or telecommunication media to threaten, humiliate and harass victims by engaging in activities such as, but not limited to, the repetitive posting of inflammatory or hateful comments (trolling), the repeated and unwanted online messages and threats, including following/monitoring someone's

¹Michele Ybarra and Myeshia Price Feeney 'ONLINE HARASSMENT, DIGITAL ABUSE, AND CYBERSTALKING IN AMERICA' (Data Society. net 21 November 2016) <https://www.datasociety.net/pubs/oh/Online_Harassment_2016.pdf> accessed 11 June 2021.

²Michele L Ybarra and Kimberly J Mitchell, 'online aggressor/targets, aggressors, and targets: a comparison of associated youth characteristics' (2004) *Journal of Child Psychology and Psychiatry* 45.

³Louise Ellison and Yaman Akdeniz 'Cyber-Stalking: The Regulation Of Harassment On The Internet' [1998] *Criminal Law Review* <https://www.cyber-rights.org/documents/stalking_article.pdf> accessed 12 June 2021; Subhajit Basu and Richard Jones 'Regulating Cyberstalking'(2007) 2

JILT<https://warwick.ac.uk/fac/soc/law/elj/jilt/2007_2/basu_jones/> accessed 10 June 2021.

⁴ Nancy S Kim, 'Web Site Proprietorship and Online Harassment' (2009) *Utah L Rev* 993

⁵ Burke Winkelman and others, 'Exploring Cyber harassment Among Women Who Use Social Media' (2015) 3(5) *Universal Journal of Public Health* <http://www.hrpub.org/journals/article_info.php?aid=2974> accessed 09 June 2021

⁶ Laura Macomber, 'A New Manual for Writers and Journalists Experiencing Harassment Online', (2018) *Columbia Journalism Rev* <<https://www.cjr.org/analysis/online-harassment-manual.php>> accessed 8 June 2021.

activities on cyberspace, taking control of victim's computers etc (cyber stalking), the publishing of sexually explicit images and video clips without consent (revenge porn), the public posting of private information of personal, embarrassing, or intimate nature (doxing) and creating fake social media accounts to manipulate victims (cyber deception). online blackmail that involves threatening to share explicit or intimate photos, videos, or information about a person unless they comply with the blackmailer's demands (cyber sextortion) using electronic communication tools, such as social media, messaging apps, or email, to harass, threaten, or humiliate someone. It can involve sending hurtful messages, spreading rumors, sharing embarrassing photos or videos, and engaging in other forms of online abuse (cyber bullying).

The grave nature of online harassment has also impacted the lives of individuals in many detrimental ways. According to the existing literature, online harassment leads to physical and mental health problems including anxiety, depression, suicidal tendencies substance abuse etc.⁷ A study by Selkie and others reveals that among the participants in the study, 27.2% reported any involvement in cyberbullying, either as a bully, victim, or

bully/victim. Specifically, 3% were classified as bullies, 17% as victims, and 7.2% as bully/victims. Among the participants, 17.4% met the criteria for depression, and 36.6% met the criteria for problem alcohol use.⁸ Schneider et al revealed that among cyberbullying victims, 33.9% reported experiencing depressive symptoms, while 9.4% reported attempting suicide.⁹

Studies further reveal that cyber victimization on the internet and social media is a unique form of peer victimization and an emerging mental health concern among teens who are digital natives'.¹⁰

In a study conducted by Short E, Brown A, Pitchford M and Barnes J it was revealed that A significant number of respondents (22%) reported that their work performance was negatively affected due to cyberbullying, and 12% changed jobs, while 5% were fired or demoted. Relationships with family and friends were impacted for 38% of respondents, and 22% gave up social activities, feeling isolated from others (40%). Financial loss was prevalent (35%), and adverse changes in general health were experienced, including nervousness and anxiety (65%), excessive worrying (71%), and engaging in self-harm behaviors (59%)

⁷Ellen M Selkie, Jessica L Fales and Megan A Moreno, "Cyberbullying Prevalence among United States Middle and High School Aged Adolescents: A Systematic Review and Quality Assessment" (2016) *J Adolesc Health* 125.

⁸ Selkie, E. M., Kota, R., Chan, Y. F., & Moreno, M. "Cyberbullying, depression, and problem alcohol use in female college students: A multisite study." (*Cyberpsychology, Behavior, and Social Networking*, 2015): 18(2), pp.79-86..

⁹ Schneider, S. K., O'donnell, L., Stueve, A., & Coulter, R. W. "Cyberbullying, school bullying, and psychological distress: A regional census of high school students." (*American journal of public health*, (2012) 102(1), pp.171-177.

¹⁰Misol Kwon, 'Cyber Victimization and Depressive Symptoms: A Mediation Model Involving Sleep Quality' (2019) 42 <<https://doi.org/10.1093/sleep/zsz067.800>> accessed 14 June 2021.

to cope with negative emotions or thoughts and difficulties in relationships.¹¹ Given the prevalence and the severity of the harms caused by online harassment, it is crucial to provide adequate mechanisms to provide redress to victims of cyber harassment.

Evidently, the development in information technology has embraced the lives of Sri Lankans to a great extent. With the increased computer literacy, the number of abusive conduct occurring in cyber space has proportionately increased. As indicated by the latest report of CERT¹² 15,895 social media related incidents have been reported in 2020 and the majority of these relates to abusive conduct via facebook, the most common social media among Sri Lankans.¹³ The study also notes that the increased use of social media, due to COVID-19 pandemic situation has resulted in more abusive online conduct in the Sri Lankan context. According to this survey, of all complaints 11% were on hacking of social media accounts and 9% were on photo abuse.¹⁴ Despite these distressing incidents, 71% of respondents have not taken any action against the

perpetrators.¹⁵ Victims' lack of understanding about the remedies available and the fear of social stigmatization are some of the factors that prevent them from seeking legal protection.¹⁶ In addition to the above, some small-scale studies done by various parties have found that online harassment is on the increase in Sri Lanka. For instance, in a study done in the University of Sri Jayawardenapura with the participation of 113 students, 60% of the respondents reported having been subject to cyber victimization with 17% being bullied through creation of fake profiles and 15% being victimized by the sharing of their photos and videos by others without their consent. Interestingly, in this study 27% respondents reported to have engaged in cyber bullying activities.¹⁷ Many other studies also indicated proliferation of online harassment within Sri Lanka.¹⁸

Regulation of Online Harassment in Sri Lanka : The Current Status

From the discussion in the foregoing section, it is evident that a growing number of internet

¹¹ Short E, Brown A, Pitchford M, Barnes J. "Revenge porn: findings from the harassment and revenge porn (HARP) survey—preliminary results." (Annual Review of CyberTherapy and Telemedicine, 2017) 15, pp.161-166.

¹² Sri Lanka Computer Emergency Readiness Team.

¹³ The National CERT of Sri Lanka, *Annual Activity Report 2020 Sri Lanka CERT CC* [http < http://cert.gov.lk/documents/Sri_Lanka_CERT_Annual_Activity_Report_2020.pdf >](http://cert.gov.lk/documents/Sri_Lanka_CERT_Annual_Activity_Report_2020.pdf) accessed 10 June 2021.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ As suggested by the interviews conducted with the victims of online harassment at CERT, for the study

on Online Harassment and the Sri Lankan legal regime as a part of the AHEAD operation of the Ministry of Higher Education funded by the World Bank

¹⁷ Vishaka S Suriyabandara, 'An Analysis Of The Attitude Towards Cyberbullying And Cyber Victimization

Among The University Students Of Sri Lanka' (2017) 4 World Journal of Social Science

<http://www.sciedu.ca/journal/index.php/wjss/article/view/11314/6945>

¹⁸ Studies conducted by UNDP (post Covid-19, more recent), UNICEF and other NGOs such as Women in Need also indicates the same

users in Sri Lanka too experience various forms of online harassment daily. However, the Sri Lankan legal regime does not contain any specific legislation that tackles online harassment, mostly owing to the relative novelty of this form of misconduct. Therefore, it is important to assess the adequacy of the existing legal mechanisms to redress the victims of online harassment. Despite the lack of legal research that has been carried out in this area, some authors are of the opinion that a few provisions of existing legislations such as Sections 345 and 348 of the Penal Code of 1885, Section 2 of the Obscene Publication Ordinance No.4 of 1927, Sections 2 and 17 of the Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act No. 20 of 1998 and the Section 3 of Computer Crimes Act No. 24 of 2007 can be employed to prosecute cases of cyber harassment to a certain extent.¹⁹

However, it is worth noting that these provisions primarily focus on punishing the perpetrator rather than providing comprehensive measures to compensate and support the victims of online harassment. For instance, Section 2 of the Obscene Publications Ordinance 1927 which prohibits the procession, distribution or public exhibition of “obscene” photographs, and

Section 286A of the Penal Code 1883 which makes it a crime to make obscene publications relating to children, could be employed as a legislative measure to tackle revenge porn.

In line with the generally accepted aims of criminal law, i.e., punishment of wrongdoers and deterrence of crime in society,²⁰ these provisions in the Penal Code and other statutes only focus on criminally sanctioning the perpetrators. However, an important aspect of any legal system is compensating a victim for the losses or injuries they have suffered as a result of the actions of another. It is to satisfy this requirement in a legal system that civil law steps in, in particular the tort or delict law, which has restitution and reparation as a central tenet. This restorative intent is grounded in the principle of justice, aiming to make the victim whole again and alleviate the consequences of the wrongful act.

In this context, it is worthwhile to explore whether the existing civil law remedies in Sri Lanka can be utilised to compensate victims of online harassment. To date, no studies have considered the applicability of civil law remedies to redress the victims of online harassment in Sri Lanka. Therefore, this study attempts to analyse the possibility of

¹⁹KS Harasgama, N Selvakkumaran. “A Comparative Analysis of Cyberstalking Legislations in UK, Singapore and Sri Lanka.” (Colombo Law Review, 2022); Aparrajitha Ariyadasa, 'Harassment Beyond Borders; Can Victims Be Protected By Cyber Bullying In Sri Lanka?' (Colombo Telegraph, 15 April 2019) <<https://www.colombotelegraph.com/index.php/harassment-> > accessed 18 June 2021.

Harasgama K.S, Munasighe P ‘Specific Offence of Cyber Sextortion for Sri Lanka’, (2020) Proceedings of SLIIT International Conference on Advancements in Sciences & Humanities 1-10.

²⁰ Andrew Ashworth and Jeremy Horder, ‘Principles of Criminal Law’ (7th edition, OUP, 2013) DOI: 10.1093/he/9780199672684.003.0001

employing *actio injuriarum* in the law of delict to provide monetary compensations to victims of cyber harassment, considering the severe emotional distress they undergo due to harms caused to their dignity, reputation and privacy.

***Actio injuriarum* in Sri Lanka**

Sri Lankan law does not recognize specific causes of action for civil wrongs as in the case of the English common law of torts. Thus, civil liability is determined by the law of delict consisting of the rules and principles of the Roman Dutch law as interpreted and developed by Sri Lankan courts and as modified by the statute law.²¹ The Roman Dutch Law provides two remedies for civil wrongs; namely, *aquilian action* based on the Roman *lex aquilia* and *actio injuriarum*. As illustrated in *Matthews v Young*²² patrimonial damages are claimed under the *actio legis aquiliae*, while the *actio injuriarum* and its derivative actions, including the action for defamation, are only available for sentimental damages.

Thus, to succeed in an *aquilian* action, the claimant must prove pecuniary loss or harm to his person or property by wilful (*dolus*) or negligent (*culpa*) conduct of the defendant. On the other hand, *actio injuriarum* is the general remedy for damages against

personality. This cause of action, recognised since the classical Roman period, protects a range of personality rights under the Latin terms *corpus*, *fama* and *dignitas* – which can easily be translated to be physical and mental integrity, good name and dignity respectively, in a broad sense.²³ Nevertheless, some scholars are of the opinion that *actio injuriarum*, focuses more on the intentional and unjustified hurting of another's feelings than the damage to public reputation.²⁴

According to Dr. Amarasinghe, *actio injuriarum* has been something in the nature of 'a maid of all work in Roman Dutch Law'.²⁵ Moreover, he has explained a series of instances where *actio injuriarum* can be employed to obtain damages, including instances such as abuse of legal process, invasion of privacy, defamation, assault, false imprisonment and cases of general interference with the dignity of a person.²⁶ However, *actio injuriarum* is a personal action and can be brought only by the victims of the particular action, as pronounced in the case of *Appuhamy v Kirihamy*²⁷ where it was decided that 'a father cannot sue for damages for slander of his daughter, although he may have felt pained by such slander'.²⁸

²¹LJM Cooray, 'Common Law in England and Sri Lanka' (1975) INT'L & COMP L Q 553.

²²*Matthews v Young* [1922] AD 492.

²³*O'Keefe v Argus Printing and Publishing Company Ltd and Another* [1954] 3 SA 244.

²⁴Bonnie Docherty, 'Defamation Law: Positive Jurisprudence' (2000) 13 Harv Hum Rts J 263.

²⁵Chittharanjan Amerasinghe, *Defamation and other Aspects of the Actio Injuriarum in Roman-Dutch Law* (Lake House Investments Ltd 1966) 197.

²⁶Chittharanjan (n21) 198.

²⁷*Appuhamy v. Kirihamy* (1886) 7 SCC 154.

²⁸ *Ibid*

Elements of *Actio Injuriarum*

We now turn to an analysis of the elements of *actio injuriarum* with reference to a few Sri Lankan and South African cases. Innes CJ in *R v Umfaan*²⁹, observes that ‘an *injuria* is a wrongful act deliberately done in contempt of another, which infringes his dignity (*dignitas*), his person (*corpus*) or his reputation (*fama*).’ According to Innes CJ in *R v Umfaan*³⁰, *Injuria* entails three essential ingredients, namely; the act complained of must be wrongful; it must be intentional; and it must violate one or other of those real rights, those rights *in rem*, related to personality, which every free man is entitled to enjoy. Moreover, in *Delonge v Costa*³¹, the court held that for liability to be established, the plaintiff must show that the defendant performed an intentional act which led the plaintiff subjectively to experience loss of dignity and that the conduct complained of would have offended the dignity of a person of ordinary sensibilities. In other words, it means that the conduct should have been offensive to the dignity of the victim, from an objective point of view. Therefore, *actio injuriarum* must be based on actual intention to harm (*animus injuriandi*) and is available to the person who suffers indignity against the person who caused it.

This position was further maintained in the more recent case of *Le Roux and others v Dey*³² as well. The applicants in *Le Roux and others v Dey* were four individuals associated with the right-wing political organization, the AWB. Preceding the case, media outlets had published the personal details of the applicants, including their names, addresses, and photographs, within the context of news reports concerning their involvement with the AWB.

As *actio injuriarum* seeks to protect individuals against injury to *corpus* (*physical and mental integrity*), *fama* (*reputation*) and *dignitas* (*dignity*),³³ one common type of suits falling under the umbrella of *actio injuriarum* are defamation actions.³⁴ However, defamation actions in Sri Lanka have specific requirements which are in addition to the basic elements of *actio injuriarum* which were discussed in the foregoing paragraphs. For example, to succeed in a Sri Lankan defamation case, the plaintiff is required to prove dissemination of false statements by the defendant that harm the plaintiff’s reputation and leads to a decline in their societal standing.³⁵ The implication of the requirement to show a decline in one’s social standing is that a person who cannot establish social standing

²⁹*R v Umfaan* 1908 TS 62.

³⁰*R v Umfaan* 1908 TS 62.

³¹*Delonge v Costa* 1989 (2) SA 457 (A).

³²*Le Roux and others v Dey* [2011] ZACC 4.

³³*O’Keeffe v Argus Printing and Publishing Company Ltd and Another* [1954] 3 SA 244.

³⁴ Defamation was a recognized as a criminal offence in Sri Lanka under Section 479 of the Penal code

which provided up to two years of imprisonment, if violated. However, this Section was repealed in 2002 and therefore criminal defamation is no longer a part of Sri Lankan law.

³⁵ Put reference to the bar association seminar series

would not have any prospect of successfully establishing defamation.³⁶ Another feature of Sri Lankan defamation law which makes it different from English law tort of defamation is the impact of the defence of truthfulness in a defamation case. Under English law, true statements although derogatory and harming a person's reputation would not be considered to be defamatory. However, under the Sri Lankan law of defamation, the defense of truth requires more than just establishing the veracity of the statement. While truth is an important factor, it must be accompanied by a demonstration that the statement was not only true but also of public benefit or interest. In other words, even if a statement is factually accurate, if it lacks public benefit or interest, it may not be considered a valid defense against a defamation claim.

In contrast to defamatory actions which have requirements over and above the basic elements of *actio injuriarum*, an action for injury to *dignitas* can be established as long as the basic elements of *actio injuriarum* can be established. Thus, in Sri Lanka an action for injury to *dignitas* of an individual under *actio injuriarum* has a broader scope than a defamatory action and can accommodate a wider range of instances involving violations of personal dignity

Using *Actio Injuriarum* for reparation of Harms of Online Harassment cases

As mentioned above, *actio injuriarum* provides a general remedy for victims whose personal rights have been infringed in respect of physical and mental integrity, reputation and dignity. It offers a strong and efficient protection against injuries to immaterial interests and in particular against insulting behaviour of any kind.³⁷ Existing literature and judicial precedence also prove that the protection of human dignity under the *actio injuriarum* is undoubtedly one of the most impressive and enduring legacies of Roman law, and a feature which places the South African law of delict at the forefront of the protection of what is arguably the most fundamental of all human rights.³⁸ Through the development of case law in South Africa, the *actio injuriarum* has been extended to allow recovery of damages for impairment of dignity in a wide range of circumstances. Online harassment too, as demonstrated above, indisputably injures the human privacy and dignity indicating it to be possibly covered under *actio injuriarum*. Although, there may be little to no case law illustrating the exact position, the principles, and elements of *actio injuriarum* appears assumingly broad enough to embrace the new phenomenon of online harassment.

For instance, in *O'Keeffe v Argus Printing and Publishing Co Ltd*³⁹, O'Keeffe brought

³⁶ Put reference to the bar association seminar series

³⁷R Zimmerman, *The Law of Obligations: Roman Foundations of the Civilian Tradition* (Oxford: Oxford University Press 1996) 1062.

³⁸Bede Harris, 'A Roman Law Solution to an Eternal Problem: A Proposed New Dignitary Tort to Remedy Sexual Harassment' (2017) 42 *Alternative LJ* 200.

³⁹*O'Keeffe* (n15).

an *actio iniuriarum* against Argus, the newspaper for publication of her image and name for advertising purposes without her consent. She alleged that in the circumstances the publication of her photograph and name had constituted a violation of her dignity. In this case, Watermeyer J held that the '*actio iniuriarum* protected person, dignity and reputation, and the unauthorized publication of a person's photograph and name for advertising purposes could constitute an aggression upon that person's dignity where this was understood to incorporate a wide range of personality interests, including her interest in privacy. As mentioned earlier in this paper, harassment in cyber space covers various forms of actions such as cyber trolling, revenge porn, cyber stalking, doxing and cyber deception. Applying the principles discussed in *O'Keefe*, in the modern context, online harassment, be it sexual or non-sexual, involves an invasion of privacy and dignity.

In *NM and others v Smith and others*⁴⁰ applicants, diagnosed with HIV, sued the defendants on *actio iniuriarum* for the violation of their rights to privacy, dignity and psychological integrity resulting from the publication of their names as HIV positive, without their consent. The court upheld the contention referring to how the mass publication of private information of the plaintiffs and the injury caused thereby.

Categorically, the truthfulness of any of these publications were not considered as *actio iniuriarum* is only concerned of the deliberate injurious conduct.

In this context, it is pertinent to analyse how the different conducts in online platforms falling within 'online harassment' can be encompassed by *actio iniuriarum* for the purpose of compensating victims. Non-consensual pornography is one type of conduct that is categorised as online harassment and used in this article as a case in point for demonstrating the possibility of using *actio iniuriarum* for compensating victims of online harassment.

Non-consensual pornography concerns the circulation or publication of sexually explicit images/videos of an individual online, without their consent. It is evident that non-consensual pornography undoubtedly is a blow to an individual's **self-esteem** as illuminated by academics such as Bates in his study "revenge porn and mental health: A qualitative analysis of the mental health effects of revenge porn on female survivors"⁴¹ and O'Connor et al in their study "cyberbullying, revenge porn and the mid-sized university: Victim characteristics, prevalence and students' knowledge of university policy and reporting procedures."⁴² In addition, it can cause

⁴⁰ *NM and others v Smith and others* [2005] 3 All SA 457 (W).

⁴¹ Bates S. "Revenge porn and mental health: A qualitative analysis of the mental health effects of revenge porn on female survivors." (Feminist Criminology, 2017) 12(1), pp.22-42.

⁴² O'Connor K, Drouin M, Davis J, Thompson H. "Cyberbullying, revenge porn and the mid-sized university: Victim characteristics, prevalence and students' knowledge of university policy and reporting procedures." (Higher Education Quarterly, 2018), 72(4), pp.344-359.

damage to a victim's reputation and dignity.⁴³ Thus it can be reasoned, that it is valid to employ *actio iniuriarum* to prosecute cases relating to non-consensual pornography. One can rationalize that there is immense psychological damage caused to the victim, thus there is no doubt that the victims should be given redress.

When mapped against the basic elements of *actio injuriarum*, it is evident that cases of non-consensual pornography generally satisfy all those requirements: The wrongful act, constituting the foundation of *actio injuriarum*, manifests in non-consensual pornography as the deliberate dissemination of personal content devoid of the victim's consent. This transgression contravenes the individual's dignity, autonomy, and privacy. Aligned with the principle of *animus injurandi*, the intent inherent in most cases of non-consensual pornography is to inflict harm, shame, or distress upon the victim. This intent is discernible in the act of disseminating intimate content, substantiating the requisite intention to cause injury in conformity with *actio injuriarum*'s stipulation.

Furthermore, non-consensual pornography can lead to victim's loss of dignity, compounded by the public exposure of their intimate materials sans consent. The inherent

affront to ordinary sensibilities is evident, for this exposure transgresses societal norms and invades the boundaries of privacy.

As discussed previously, *actio iniuriarum*, is a type of delict law that aids in safeguarding an individual from non-patrimonial losses. Essentially it covers any damage that falls within the scope of losses such as disfigurement, agony, emotional shock, reputation, self-esteem and reduction in the amenities of life. As Whitty declared *actio iniuriarum* protects "who a person is rather than what a person has."⁴⁴ Moreover, as discussed in the case *Delonge v Costa* the perpetrator deliberately does an act which caused the victim to subjectively experience loss of their dignity. It can be established the conduct of publishing or distributing obscene material of an individual without their consent is offensive to dignity from an objective point of view, and thereby, *actio injuriarum* could be an effective remedy to such victims who have been subjected to wilful causing of harm and injury to their dignity and reputation.

Likewise, cyberstalking is another type of cyber harassment. It is the use of the Internet or other electronic means to stalking or harassing an individual, group, or an organization.⁴⁵ Sri Lanka does not have any specific laws relating to cyberstalking.

⁴³ Langlois G, Slane A.. "Economies of self: The case of revenge porn." (Communication and Critical/Cultural Studies, 2017) 14(2), pp.120-138.

⁴⁴ Whitty, Niall, ed. "Rights of personality in Scots law: A comparative perspective." (Edinburgh University Press, 2014.)

⁴⁵ Bocij P, McFarlane L. "Cyberstalking: The technology of hate." The Police Journal 76.3 (2003): 204-221.

However, Section 4 of the Computer Crime Act of 2007⁴⁶ which makes it an offence to intentionally perform an act which would help gain access to any information held in any computer knowingly can be interpreted in a way as to encompass cyberstalking within its scope. Nevertheless, under this provision, no legal redress can be offered to the victim, but rather only sanctions the perpetrator.

However, a victim of cyberstalking may be able to obtain compensation for damage to dignity by establishing the required elements of *actio injuriarum*. The wrongful act in cyberstalking materializes through a pattern of persistent and deliberate online harassment, encompassing actions such as sending menacing messages, propagating false information, and invading the victim's digital privacy. The intention of cyberstalkers is rooted in the purposeful infliction of harm, distress, or fear upon the victim, often sustained over time to maximize emotional distress. This targeted behavior reveals an *animus injurandi* – the specific intent to cause injury – consistent with the animating spirit of *actio injuriarum*.

Moreover, cyberstalking infringes a victim's dignity and privacy. The victim's dignity is eroded as the persistent intrusion into their personal online space results in emotional distress, compounded by threats and harassment. Thus, it can be seen *actio injuriarum* can come to the aid of victims of cyberstalking too in obtaining compensation.

Similar to the case of non-consensual pornography and cyberstalking, there is potential for using *actio injuriarum* for compensating victims of other types of online harassment too.

Conclusion

Undeniably, online harassment is a growing menace to the modern world. Although many jurisdictions are attempting to combat online harassment utilising various novel mechanisms, it appears that old law, which arguably never envisaged such, is still capable of effectively providing remedies in the absence of specific legislation to that effect. *Actio injuriarum*, the action for injury under the law of delict is one such old laws which can come to the rescue in the case of online harassment despite it being a relatively new phenomenon. Broad in scope, it only requires to establish that the wrongful act was committed with the intent of causing injury to another's dignity or reputation.

Thus, as demonstrated above, it is evident that victims of situations falling within the ambit of online harassment, undoubtedly could avail themselves of *actio injuriarum* to obtain effective relief for the injury they have suffered. It could be understood in the light of the Sri Lankan legal context where there are no laws particularly designed to fight against online harassment but provisions of some laws could be relevant and could be used in such situations. Unfortunately, those provisions are limited in application and is

⁴⁶ Computer Crime Act, No. 24 of 2007

only concerned of punishing the perpetrator. Conversely, *actio injuriarum* makes provisions for the victims to get compensated for the grievance they have suffered due to the wrongful conduct of the perpetrator. As the foregoing analysis suggests, the application of *actio injuriarum* is adequately broad to cover many types of online misbehaviour that the victim may have suffered, that would fall within the category of 'online harassment'.

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