

## SOCIAL MEDIA CONTENT ABUSE:

### How Offensive Is Offensive?

By: Nor Fadzlina Nawi

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In an increasingly digital world, social media engagements no longer revolve around interactions among private and personal networks but have become a powerful platform for public



engagement. Sharing critical updates and receiving candid and real-time feedback about local concerns via social media have become a daily norm.

Undeniably, social media texts, posts and tweets often help disperse information rapidly to community members, which can be useful, especially during public safety emergencies and natural disasters. But, unfortunately, social media is laden with dangers for law enforcement agencies despite these positive aspects. Often, these so-called ‘engagements’ have led to mis/disinformation, cyberbullying, and online harms in various instances.

Inevitably, this trend led to legislatures and governments worldwide, including Malaysia, struggling with the challenge of how to effectively tackle social media engagements when it comes to instances of abuse and misuse of social media platforms. In Malaysia, this concern is mostly monitored and regulated under the **Communications and Multimedia Act (CMA) 1998** via a monitoring body, the Malaysian Communications and Multimedia Commission (MCMC), established under the act.

In 2020, MCMC reported filing 48 court charges against several individuals for misusing social media. MCMC also claimed that these actions marked a 66% increase from the cases filed in 2019. Out of these 48 charges, 34 were listed as offences committed under **Section 233 of the CMA** – of these, 22 charges were for the act of sharing or spreading pornographic content, followed by offensive content with nine charges. In comparison, fake or false content recorded three charges. The content could be in the form of sound, text, or pictures. Upon conviction, offenders can be fined no more



than RM50,000 or imprisoned for one year or both.

Interestingly, although **Section 233 of the CMA** made any act of sharing or spreading fake, offensive and threatening content an offence, the act has not provided a clear definition of what is considered offensive content. Several commentators have argued that this makes the scope of the provision as being rather too broad. Any Malaysian can lodge a police report claiming certain contents to be offensive, regardless of whether they are the intended recipient or target of a content. Amongst contents that have been considered offensive are those that may upset Muslims against non-Muslim and offensive remarks towards the royalty or government officials.

Even though **Section 211 of the CMA** do describe the types of content on the Internet considered as offensive as being content that is: indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse, threaten or harass any person, but such description is still considered very broad.

Concerns have been raised that these provisions may be used to silence dissenting points of view and breach citizens’ freedom of expression. However, it is counter-argued that freedom of expression is not absolute and must be limited within the law. Though having a considerably broad interpretation, the two provisions are thus seen to balance between the need to protect citizens’ constitutional rights and the need to tackle the issue of social media abuse to create a safe and secure Internet environment.

Further, in reality, it is not easy to draw out a comprehensive definition. What is deemed offensive content in a specific country, custom, or people may not apply similarly to others. It also differs and varies from age to age, region to region, from culture to culture and perhaps religion to religion. In other words, **Section 211** and **Section 233 of the CMA** are designed to have a broad interpretation to cover any offensive content on the Internet, including the future ones. It will be subjected to the court’s assessment of whether the content falls under

the types of offensive content described in **Section 211 and Section 233 of the CMA**.

The case of **PP v Rutinin Bin Suhaimin [2015] 3 CLJ 838** has also established that three ingredients must be proven to be an offence under **Section 233 CMA 1998**;

- (i) *the accused is the one who initiated the communication in question,*
- (ii) *the communication in question is either indecent, obscene, false, menacing, or offensive in character; and*
- (iii) *the accused had the intention to annoy, abuse, threaten or harass any person.*

Hence, any person who posts any offensive materials on the Internet may be prosecuted under **Section 233 of the CMA**, but the case must be proven beyond a reasonable doubt, including proving the post has been disseminated with an intent to annoy, abuse, threaten or harass others. Establishing these ingredients is a challenge for legislators when offensive content on the Internet is criminalized. Whatever the case, on the part of the public, they should remain vigilant in managing social media platforms to avoid their social media engagements being considered a form of abuse for being offensive.



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#### PROFIL

Fadzlina merupakan seorang Pensyarah Kanan di Universiti Teknologi MARA (UiTM). Beliau dilahirkan di Kuala Lumpur pada 8 Jun 1977 dan mendapat pendidikan awal di sekitar ibu kota.

Kemudian beliau melanjutkan pelajaran ke peringkat Ijazah Sarjana Muda (Kepujian) (2001) dan Ijazah Sarjana Undang-undang Perbandingan (2002) di Universiti Islam Antarabangsa Malaysia (UIAM).

Setelah tamat pengajian, beliau telah memulakan khidmat sebagai seorang guru di Pusat Matrikulasi UIAM. Namun atas dasar ingin meluaskan pengalaman, beliau telah memohon untuk menjadi pensyarah di UiTM dan mula berkhidmat di kampus Merbok, Kedah dari tahun 2002.

Pada tahun 2008, beliau ditawarkan biasiswa untuk melanjutkan pelajaran ke peringkat Ijazah Kedoktoran di La Trobe University, Australia dalam bidang Undang-Undang Keluarga.

Seusai tamat pengajian pada tahun 2013, beliau mula berkhidmat di kampus Seremban, Negeri Sembilan sehingga kini. Beliau sangat gemar membaca dan menulis. Malah aktiviti penulisan memberi satu bentuk ketenangan buatnya. Sebelum ini beliau aktif menulis di blog [fadzlina1977.blogspot.com](https://fadzlina1977.blogspot.com) dan <https://lawkingdom.wordpress.com/> sehingga mencecah hampir 700 perkongsian.

Kini, beliau menulis mengikut isu semasa dan ilmiah yang dekat di hati di media sosial dan jurnal akademik. Beliau berharap usaha penulisan akan memberi peluang dan lebih banyak ruang untuk bertukar fikiran dan berkongsi pengalamannya dengan orang lain.

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Azlina merupakan seorang pensyarah undang-undang di UiTM Kampus Seremban.

Sebelum memulakan kerjaya di UiTM, beliau merupakan seorang peguam di Heiley Hassan, Tan & Partners, khusus dalam litigasi sivil dan perbankan dari tahun 1999—2003.

Pada tahun 2003, beliau telah bertugas sebagai Penolong Pendaftar di UiTM hingga tahun 2012.

Beliau juga pernah berkhidmat selama setahun di UiTM Cawangan Melaka sebelum bertukar kerjaya sebagai pensyarah di Fakulti Undang-Undang pada tahun 2013.

Azlina mempunyai kepakaran dalam undang-undang awam seperti Undang-Undang Perlembagaan, Undang-Undang Pentadbiran, Undang-Undang Jenayah, Jurisprudens, Undang-Undang Keterangan dan Prosedur Sivil, serta berpengalaman dalam bidang Undang-Undang Alam Sekitar dan Undang-Undang Pembinaan.

