

JAPAN'S POLICY AGAINST THE CRIME OF STALKING

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Abstract

Stalking is a relatively newly criminalized type of behavior that should be brought to public attention and awareness. Through a review of statistical data, the relevant anti-stalking act, media portrayal and social impact, the article aims to provide an overview of Japan's response to stalking acts. In Japan, stalking is listed as a criminal offence punishable by imprisonment with work and fines. It can be concluded that almost all victims receive additional guidance, however, this has been criticized as insufficient. Statistical studies with a wider scope should be introduced, while the law should be revised regularly and expanded to include clinical therapy for perpetrators.

Keywords: *stalking, Japan, legislation*

JEL Codes: *K14*

Introduction

Stalking generally means following an individual around. Similarly, the term stalker refers to a person who is extraordinarily interested in another individual.

Originally, the verb “stalk” comes from the English language and between the 16th and 20th century it was used to refer to the act of creeping up to catch or harm a person or animal.

In recent decades, however, the meaning of this word has changed. In latter part of the twentieth century, the media began to refer to the act of a person persistently pursuing others and annoying or frightening them as “stalking”. It was mainly cases of celebrities falling victim to their alleged fans that gained media attention. In other words, at first stalking was regarded as a new form of an obsessive fan pursuit (Pathé, Mullen, Purcell, 2000). Occasionally, these acts would surpass simple pursuit and perpetrators would also resort to violence, sometimes with a fatal end for the victim – for example, the murder case of John Lennon.

As society has become more and more aware of instances of people persistently pursuing and thereby bothering, scaring or harming others, and as it has become clear that these acts are criminal and illegal, the terms “stalking” and “stalker” have also come to be used to refer to such criminal acts and criminals (Pathé, Mullen, Purcell, 2000).

Having said that stalking became an important issue in the 20th century, it should be noted that it mostly came to light in the eighties and nineties. The first anti-stalking law was enacted in 1990 by the US (California Penal Code Section 646.9). Today, all 50 States of America have special criminal anti-stalking laws in place. Japan, Canada, Australia, India and most of the EU member states have since followed suit and introduced stalking as a specific offence.

This article will focus on the set of circumstances surrounding the stalking phenomenon in Japan. The reason for choosing this country is the author's personal experience while residing there. Through a review of statistical data, the relevant anti-stalking act, media

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portrayal and social impact, the article aims to provide an overview of Japan’s response to stalking acts.

1. Definition and statistics

Japan has borrowed the terms “stalking” and “stalker” from English; however, “stalking” is sometimes referred to as “tsukimatoji” in Japanese, which can be translated as “to follow someone around”. It has been pointed out that pursuing someone by following them around is the most basic form of stalking. The Merriam Webster Dictionary gives the following legal definition of stalking:

√ the act or crime of willfully and repeatedly following or harassing another person in circumstances that would cause a reasonable person to fear injury or death especially because of express or implied threats;

√ broadly: a crime of engaging in a course of conduct directed at a person that serves no legitimate purpose and seriously alarms, annoys, or intimidates that person.

NOTE: Stalking is often considered to be aggravated when the conduct involved also violates a restraining order protecting the victim.

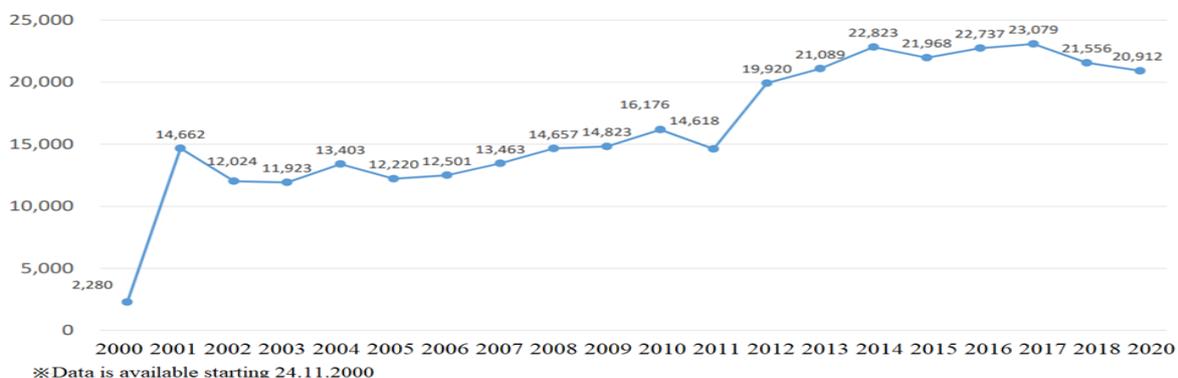
With advances in technology, stalking cases have only escalated in recent years, with the exact numbers being hard to define in light, for example, of cyber stalking, and victims’ reluctance to report (Yoshimatsu, 2015; Al Jazeera, 2014). In the US, millions of people are victims of stalking every year, with one source citing the number between 6.5 and 8.8 million (Smith et al., 2018).

Statistical data on stalking in Japan, provided by the country’s National Police Agency is available starting the end of November 2000, when the Anti-Stalking Act (Act on Regulation of Stalking and Similar Acts, 2000) was first enacted. The National Police Agency publishes yearly data regarding the response to stalker and domestic violence cases, with the latest figures published in the beginning of March 2020.

What is immediately noticeable and hardly surprising is the gender ratio. Roughly 84% of victims are female, while over 80% of perpetrators are male. Most of the victims are in their twenties, while most of the stalkers are in their twenties or thirties. In around 75% of the cases, the victim and the stalker know each other (friends, colleagues, (formerly) in a romantic relationship, (formerly married), (National Police Agency of Japan, 2020).

The number of consultations, i.e. reported cases, (Figure 1) has been at a high level since 2012, but started to decrease in 2018, coming down to 20 912 in 2019 (down 644 cases, or 3%, compared to the previous year). Overall, however, consultations regarding stalking cases have doubled over the past decade.

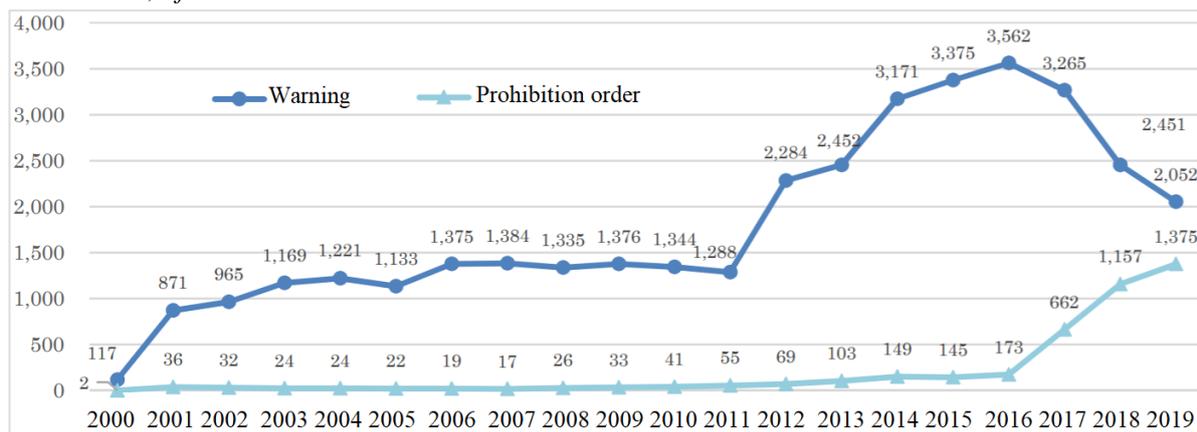
Figure 1. Changes in the number of consultations regarding stalker cases



Source: Response to stalker and domestic violence cases, etc., by National Police of Japan. 05.03.2020. https://www.npa.go.jp/safetylife/seianki/stalker/RI_ponti.pdf

The number of issued warnings based on the Anti-Stalking Act (Figure 2) have increased since 2012, but then decreased from 2017, down to 2052 cases (399 cases, or 16.3% less compared to the previous year) in 2019. The number of prohibition and similar orders was on a slowly increasing trend, but it spiked sharply from 2017, increasing to 1375 cases (+218 cases, + 18.8% compared to the previous year) in 2019, the highest number since the enforcement of the law.

Figure 2. Issued warnings and prohibition orders based on the Act on Regulation of Stalking and Similar Acts, after revision



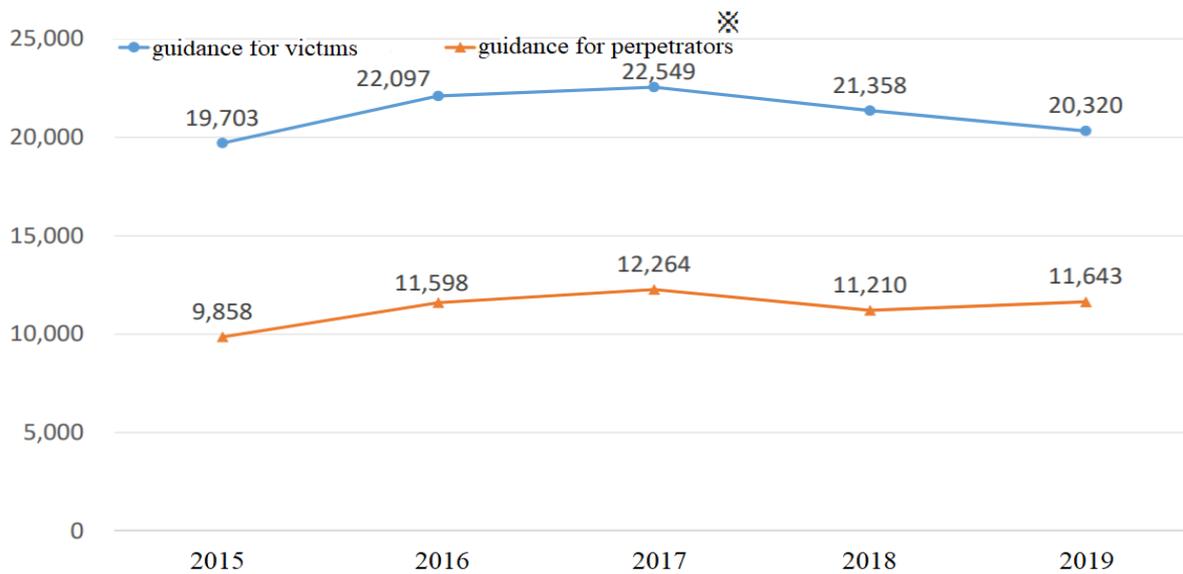
Source: Response to stalker and domestic violence cases, etc., by National Police of Japan. 05.03.2020. https://www.npa.go.jp/safetylife/seianki/stalker/RI_ponti.pdf

2012 also marked the increase of the number of arrests for violations of the Anti-Stalking Act. In previous years, the number had ranged between 150 and 250, whereas in 2012 it surpassed 350, and continued to grow steadily, peaking at 926 arrests in 2017, but then decreased slightly from 2018 and was down to 864 in 2019 (-0.7% compared to the previous year).

On the other hand, the number of arrests for criminal offenses and other special law offenses related to stalker cases remained at a high level since 2012 (reaching close to or over 1900 cases in 2014, 2015 and 2016), but it decreased from 2017, and there were 1,491 such cases in 2019 (-103 cases compared to the previous year, or -6.5%).

The police itself offers assistance to both victims and stalkers. Figure 3 displays the instances in the last five years (2015-2019) where victims and stalkers have received aid. If we compare the reported cases in Figure 1, it can be concluded that almost all victims receive additional guidance. Assistance offered or mediated by the authorities also includes teaching damage prevention measures and negotiation tactics, introduction to private organizations that carry out damage prevention activities, use of police facilities as a place to discuss damage prevention, teaching or lending items that contribute to damage prevention, delivery of documents to the effect that warnings have been implemented, etc.

Figure 3. Trends in crime prevention guidance for stalker victims and guidance warnings for perpetrators



Source: Response to stalker and domestic violence cases, etc., by National Police of Japan. 05.03.2020.
https://www.npa.go.jp/safetylife/seianki/stalker/R1_ponti.pdf

Table 1 shows the number of issued restraining orders based on the Anti-Stalking Act in 2019. The 1375 orders comprise around 6,6% of all stalker cases reported during the same year. Additional data suggests that 153 of the restraining orders relate to an extended penalty from previous years.

Table 1. Application of restraining orders, etc. based on the Act on Regulation of Stalking and Similar Acts, after revision

○ Implementation of restraining orders

No. of cases	Without warning		With warning	
	1,375	1,242		133
Ordinary		Emergency	Ordinary	Emergency
684		558	90	43

Source: Response to stalker and domestic violence cases, etc., by National Police of Japan. 05.03.2020.
https://www.npa.go.jp/safetylife/seianki/stalker/R1_ponti.pdf

2. Legal frame

Act No. 81 of the year 2000, also known as Anti-Stalking Act and Law on Regulation of Stalking and Similar Acts, states the following as its purpose:

Article 1 *This law aims to provide for the necessary regulation of stalking, such as sanctioning stalking acts, and establishes measures for assistance to the aggrieved party, thereby preventing harm to the body, freedom and dignity of the individual. In addition, it aims to contribute to the safety and peace of the nation's lives.*

2.1. Legal definitions

The Law defines the following acts as “stalking”:

Article 2. In this Act, the term “following, etc.” (NB: tsukimatoi, the Japanese word for stalking and similar behavior) refers to acts performed with the purpose of satisfying romantic feelings or other favorable feelings for a specific person or feelings of resentment towards a specific person or his/her spouse, a direct relative or co-resident, or any other person who has a close relationship with the specific person in social life.

Further, according to the same article, such acts include, but are not limited to: following, stalking, ambushing a person, monitoring their actions or barging in on them without authorization at their home, school, workplace or other whereabouts; attempting contact despite rejection (via phone, fax, email, etc.); demanding meetings, a relationship or any other non-obligatory activities; sending objects that cause fear and disgust (animal corpses, garbage, etc.); extremely vulgar or violent speech or actions; defamation; spreading files that cause sexual shame.

2.3. Warnings

Further, Article 3 of the law clearly prohibits anyone from threatening another party’s safety, residence, etc., dignity or their freedom of action by stalking them, while Article 4 lists the warnings that authorities must issue when violations of the law have been confirmed.

Article 4. Paragraph (1) The superintendent or head of police station, upon receiving a request from a victim, and if a violation is confirmed and it is recognized that there is a risk of the stalking act being performed repeatedly, can issue a warning to the person who performed the act that it should not be repeated, as stipulated by the rules of the National Public Safety Commission.

Paragraph (3) When issuing a warning, the superintendent or head of police station shall promptly notify the person who has made the request under article 4, Paragraph 1 of the content and date and time of the warning.

2.4. Restraining orders

Restraining orders, or prohibition orders, as the Japanese Law calls them specifically, can be issued in the following circumstances described in **Article 5**:

Paragraph (1) In the case of an act that violates the provisions of Article 3, when it is assessed that there is a risk that the person who has performed the act may repeat it more than once, the Public Safety Commission may, at the request of the aggrieved party, or by authority, order the following matters, as provided for in the National Public Safety Commission rules:

1. Not to repeat the act further.
2. Items necessary to prevent the act from being repeated further.

Paragraph (2) When the Public Safety Commission intends to issue an order pursuant to the provisions of the preceding paragraph (hereinafter referred to as “prohibition order, etc.”), a hearing shall be conducted regardless of the classification of procedures for making an opinion statement pursuant to the provision of Article 13, paragraph 1 of the Administrative Procedure Act (Act No. 88 of 1993).

Paragraph (3) Regardless of the provisions of the preceding paragraph and Article 13 (1) of the Administrative Procedures Act, the Public Safety Commission, in the case described in paragraph (1) for acts that violate the provisions of Article 3, in order to prevent the impairment of the physical safety, honor or peace of residence, etc., or the freedom of movement of the aggrieved party, when it is deemed that there is an urgent need to prevent such a situation, may issue a prohibition order by request or by ex officio without giving an opportunity for hearing or justification. In this case, the Public Safety Commission that has issued the prohibition order, etc. shall conduct a hearing within 15 days from the date of the prohibition order.

Paragraph (5) If one Public Safety Commission has issued a prohibition order, other Public Safety Commissions may not give a prohibition order, etc. to the same person for acts that violate the provisions of Article 3 pertaining to the prohibition order, etc.

Paragraph (8) The effect of the prohibition order, etc. shall be one year from the date it was issued.

Paragraph (9) If the Public Safety Commission, in the case of issuing a prohibition order, etc., finds that it is necessary to continue the prohibition order, etc. after the lapse of the period set forth in the preceding paragraph, the period of validity of the prohibition order, etc. may be extended for one year at the request of the aggrieved party or ex officio. The same shall apply when further extension is made after the lapse of the extension period.

2.5. Penalties

Article 18. Anyone who has committed stalking is to be punished by imprisonment with work for not more than one year or a fine not exceeding one million yen.

Article 19. Paragraph (1) A person who acts as a stalker in violation of a prohibition (restraining) order, etc. (limited to those pertaining to Article 5, paragraph 1, item 1; the same shall apply hereinafter) shall be punished by imprisonment with work for not more than two years or a fine of not more than two million yen.

Article 20. In addition to what is provided for in the preceding article, a person who violates a prohibition order, etc. shall be punished by imprisonment with work for not more than six months or a fine of not more than 500,000 yen.

2.6. Police and other assistance

Article 7 states the police's obligations to assist in stalking cases.

Article 7. Paragraph (1) The police, after receiving a request from the victim of a stalking act, etc. that he/she wants to receive assistance in order to prevent damages related to the stalker act, has to provide instructions for measures to prevent damages related to stalking, etc. and other necessary assistance provided by the rules of the National Public Safety Commission.

Paragraph (2) In providing the assistance set forth in the preceding paragraph, the police chief, etc., shall endeavor to work closely with the relevant administrative organs or related public and private organizations.

Further to this, articles 6, 8, 9, 10, 11 consider other essential aspects:

- √ Prohibition of information provision related to stalking, etc.
- √ Required confidentiality from law enforcement officials and other persons involved.
- √ Relevant personnel training on the characteristics of stalking, as well as awareness promotion necessary to deepen the understanding of the human rights of the aggrieved party.
- √ Support for stalking and other counterparties at women's bureaus and other appropriate facilities, support for staying in private facilities, and accommodation in public rental housing.
- √ Assistance from residents in the area where the stalking act, etc. was performed.
- √ Promotion of research on methods for rehabilitating persons who have stalked, etc., and methods for restoring the mental and physical health of victims.
- √ Spreading knowledge through educational activities, publicity activities, etc.
- √ Cooperation and support with voluntary organizational activities of the private sector.

3. Discussion

While the listed aspects appear to be adequate and inclusive, it should be noted that some of them have been added post-factum, as the Anti-Stalking Act has been found severely

lacking in recent years, leading to two revisions in order to close legal loopholes and increase enforcement (Itakura, 17.10.2019). Both revisions took place in response to murder cases of stalker victims – in 2013 the Act was expanded to include email harassment after the Zushi case (2012), and in 2017 to cover social media after the Koganei case (2016). The changes brought a significant surge in reported cases (as evident by the data in Figure 1). Until then, these forms of communication had not been explicitly covered in the law. The Act itself was only introduced after the murder of a 21-year-old student back in 1999 (Okegawa case, 1999) – a case which led to great public outrage, because the victim had sought help from the police numerous times without them taking action (Beyer, 2018; Itakura, 17.10.2019).

The police have been criticized on more than one occasion for not taking necessary precautions, either downplaying the severity of the situation or not taking emergency measures, such as the so-called “provisional order” which allows police to warn a stalker once and arrest him immediately upon further violations (this measure had not been used even once between 2000 and 2014).

It has also been pointed out that the law itself, even with its recent amendments, does not allow for immediate action in terms of confining perpetrators to ensure victims’ safety. Instead, one must go through the often-tedious process of submitting an official request for a warning and rely on assistance with questionable effects, considering stalkers’ potentially escalating dangerous behavior (Yoshimatsu, 2015). Fines and restrictions for stalkers have also been found lacking or too weak, as stalkers are generally aware of them and find ways to go around them – for example, police have reported that in some cases it has been hard to get ahold of stalkers in order to present them with their first warning, because perpetrators have “made themselves scarce”, thereby prolonging or avoiding prosecutions.

While under the new law, police can issue restraining orders without prior warning in emergency cases (the decline in warnings and rise in restraining orders since 2017 reflects this change well, see Figure 2), it can hardly be argued that measures against stalkers often come too late, as they are usually arrested, fined and confined only after they have violated a restraining order. For example, it can be more beneficial for the victim if the stalker is charged on grounds of intimidation and defamation instead (Itakura, 05.09.2019). The number of warnings and restraining orders against stalkers is also considerably small compared to the total number of reported cases (Figure 1) and no report exists to explain how the rest of these cases have played out.

What should be considered in the future is the victim’s and stalker’s psyche. Japan is a rather close-minded society when it comes to revealing personal matters, and even today this is generally frowned upon. This is considered one of the reasons why not all cases of stalking or domestic violence are reported – there exists this stigma of “causing others trouble” and “shame”, which may seem peculiar and illogical to most Westerners nowadays, but is considered the norm in Japan. Especially if the aggressor is one’s (former) spouse or romantic partner, or one’s superior at work, victims may be discouraged to seek help, while police, on the other hand, have been reported to downplay the situation and prefer not to interfere, for example, in “marital matters” (response to domestic violence may be even worse than to stalking, as domestic affairs are generally presumed off-limits).

A stalker’s psyche, on the other hand, is a lot more complex, and there have been many publications by scientists and stalker victims alike concerning stalkers’ mentality, behavior and motives. One thing that the law should account for is precisely stalkers’ unpredictability. On the stalker’s side, there is almost always some kind of mental issue at play, and while official warnings, fines and imprisonment are logical from a legal point of view, the assistance of medical professionals should be sought early on so as to determine the perpetrator’s state of mind and thereby the likelihood for further, more dangerous actions. To rely simply on official

warnings, for example, and a stalker's good will to follow through and accept them, would be to put the victim's life at risk. A maximum imprisonment of two years and fine of two million yen (currently approximately 17 300 EUR or 33 900 BGN) may discourage some, but not all with a feeble state of mind. In fact, this may have the opposite effect.

Currently there is one major NPO specializing in counseling not only for harassment victims, but also perpetrators – NPO Humanity. As its creator and director is also a victim of stalking, the company takes interest in stalker cases and aids both sides of the “argument”. The company has reportedly dealt with more than 500 stalkers and employs the help of certified psychiatrists and innovative therapies. It stands firm on the belief that stalkers should be offered professional help and that the Anti-Stalking Act should be expanded (Itakura, 17.10.2019).

Conclusion

Japan is certainly one of the world's pioneers regarding anti-stalking measures. Compared to other countries, where the issue has not yet been recognized, much less included in the penal code, Japan is several steps ahead. However, there is still much room for improvement.

Assistance and counseling, both for victim and aggressor, should be the norm. Stalking should be viewed as not only a crime that requires punishment, but also as a condition that requires treatment. Additionally, social campaigns raising awareness and encouraging victims to confide should be promoted extensively. In a conservative and rather closed-off society like Japan, with an otherwise low criminal rate, victims may find it hard to recognize dangerous behavior, or to act sensibly in cases where their safety is endangered. While media exposure of similar cases the #MeToo Movement (2019), for example has encouraged victims to step forward, many hurdles still exist.

Available statistics from the National Police Agency of Japan offer insight which – at this point in time – Bulgaria, the author's homeland, is not researching or reflecting on (for example, the only available statistics on domestic violence in Bulgaria are based on a counseling company's logs). Statistical research in Japan should be broadened to include other aspects, like outcome of stalker cases, stalkers' previous criminal record (ex. whether this is their first time as a stalker), psychological profile or results of psychological inspection, respectively, to name but a few. The Anti-Stalking Act should be continuously developed to incorporate different potential scenarios.

In comparison to Japan, stalking has been sanctioned in Bulgaria since 2004 under Article 5 of the Law on protection against discrimination. According to this law, only coercive administrative measures, and administrative penalties in the form of fines may be imposed. As of 2019, however, stalking has been added to the Penal code and is punishable by imprisonment of up to one year or probation.

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