

# HATE SPEECH UNDER INTERNATIONAL AND NATIONAL LAWS: A COMPARATIVE ANALYSIS FROM ISLAMIC LAW PERSPECTIVE

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# Introduction

Freedom of expression is a significant human right recognized by the major international human right instruments, national laws or the constitutions as well as Islamic law. It is one of the fundamental elements of a society where people enjoys the opportunity to express their valuable opinion with regard to a social, political, religious, economic and other crucial matters that attract the mind of the people of a particular society. This right enables the free exchange of ideas, opinions and information and thus allows members of society to form their own opinions on issues of public importance. Freedom of expression serves public debate and supports a free and independent press, informed citizenship and the transparent functioning of the state. Nevertheless, the term contains wide range of means and ways to express opinion, thus the dimension of freedom of expression is remained undefined rather than left to the time and context of the society to define freedom of expression to meet the necessity of the society.

# Objective of Research

- To identify the position of international law and national law related to hate speech.
- To identify the Islamic law position regarding hate speech.

# Methodology

The study follows qualitative approach to discuss the issues and analyses data. Basically, secondary resources are used in this paper, thus information has been taken from articles, book, newspapers, case laws and status.

# Hate Speech under International Law

- The Universal Declaration of Human Rights 1948
- Convention on the Elimination of All Forms of Racial Discrimination (CERD) 1965
- International Convention on Civil and Political Rights (ICCPR)
- The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) 1979

# National Law

Freedom of expression is granted by Article 5 of the Basic Law for the Federal Republic of Germany, which also states that there is no censorship and that freedom of expression may be limited by law. The article 14 of the Greek Constitution 1975 guarantees the freedom of speech, of expression and of the press for all but with certain restrictions or exceptions. Articles 6, 7, 9 and 10 of the Fundamental Law of Hungary 2012 establishes the rights of freedom of expression, speech, press, thought, conscience, religion, artistic creation, scientific research, and assembly. Some of these rights are limited by the penal code 1978. Freedom of speech is protected by Article 40.6.1 of the Irish constitution 1937. Furthermore, the constitution explicitly requires that the publication of “seditious or indecent matter” be a criminal offence. This leads to the government for passing blasphemy legislation on 8 July 2009. In Italy, the Constitution of Italy 1947 guarantees the freedom of speech in Article 21. Article 7 of the Dutch Constitution 1815, and The Dutch Criminal Code in section 137(c) prohibits the hate speech. Article 37 of the Portuguese Constitution prohibits censorship of opinion and information. Article 578 of the Penal Code of Spain prohibits the “Glorification or justification, by any means of public expression or dissemination. Freedom of speech is regulated in three parts of the Constitution of Sweden 1719.

# Hate Speech in Islam

Under traditional Islamic law, the form of speech is divided into two types namely, “sayings, and acts”. First, the form of sayings covers any expression that comes in direct speech, statements, declarations, advertisements, rumors, chants, articles, books, messages, publications, audio material, fatwas, e-mail messages, promotion of materials, cartoons, or in any of the forms of modern expression. This is understood from the general thrust of Quranic texts, such as: “speak fairly to the people” (The Quran, verse 2:83), and “shun the word that is false”

(The Quran, verse 22:30). With the words “speak” and “the word” in these verses, it is clear that Islamic law does not confine to the form of the direct speech, but include any form of words. Second, the form of acts includes any action that supports hate speech, whether in the form of public support, justification, publishing, helping to spread hate speech, such as creating the suitable atmosphere for promoting this speech through holding or participating in meetings or conferences that use hate speech, or by providing financial support to it, sponsoring it, or protecting it. This concept includes all the procedures and facilities that publicly or secretly support this speech.

# Conclusion

The study concluded that International law has struggled to find answers in the difficult balancing exercise of preventing hate speech and of protecting, at the same time, the freedom of expression. Nevertheless, international agencies have identified conditions of restrictions on freedom of expression to take into account. The study concludes that traditional Islamic law has considered the freedom of expression to be an important fundamental of human rights, it must achieve certain essential objectives, which are the disclosure of truth, the honour of human beings, and fundamental rights. In addition, the freedom of expression is constructed, in essence, on some basic principles, such as, everyone shall have the right to criticize, freedom of religion, and freedom of thought. The paper further concludes that traditional Islamic law enacted some conditions and limitations on the freedom of expression in order to protect the rights of others and agree with the principles, legal rules, and morals of Islam.