

HATE SPEECH IN INTERNATIONAL PERSPECTIVE: AN ANALYSIS

Written by *Prithivi Raj*

LL.M Student, Rajiv Gandhi National University of Law, Punjab

ABSTRACT

Freedom of Speech and Expression is not as simple as it appears. Some people have argued to limit the hate speech to sustain morality. In this article various international conventions have been dealt with the issues of Hate speech. International framework comprising of various conventions has been deal with along with the inclusion of global perspective of hate speech. Hate Speech effects includes totalitarianism, negationism, homophobia and other spheres have been dealt by precedents. The author has dealt with Human rights issues and hate speech in this article. The author gives a comparative view on hate speech among different countries. In this article the freedom of Expression has been given a new look for interpretation of hate speech.

INTRODUCTION

There is no doubt that each and every set of society or community tends to show variation in each and every manner. Their lifestyle and religious practices vary and it becomes necessary that differences aside, there is reconciliation between the right to freedom of thought and expression with the right to practice religion and the right to be protected from any form of discrimination. Sometimes, when there are attempts of amalgamation of these rights, there is friction in the society as these rights touch every person living in the societies.ⁱ ECHR or the European Court of Human Rights (ECHR) guarantees right to freedom of expression under Article 10ⁱⁱ of the Convention. Right to freedom of thought is an absolute right while the same absolutism is not bestowed upon the right to freedom of expression. This right as pointed in clause 2 of the said article mentions about duties and responsibilities that have been casted upon the persons who exercise this right and furthermore, mention that such exercise has to be in accordance with the law. Thus *forum externum* (freedom of expression) not bestowed with such guaranteed exercise like *forum internum* (freedom of thought) has been bestowed with. It has been observed by the court that: “it is particularly conscious of the vital importance of combating racial discrimination in all its forms and manifestations”, thereby understanding its pivotal role in the fight against racism and other forms of discrimination.ⁱⁱⁱ The court has observed in the *Gunduz*^{iv} judgment: “*that tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance), provided that any “formalities”, “conditions”, “restrictions” or “penalties” imposed are proportionate to the legitimate aim pursued*”. Numbers of States across the globe have adopted hate speech legislations that prescribe the scope of elements that have been labelled as hate speech. It is the recommendation (97) sub-clause 20 of the Council of Europe’s Committee that defines hate speech as: “*the term hate speech shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti- Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin*”.^v Hate speech is not an isolated topic but contains multitude of events that result into it. It includes three basic elements, firstly hate in the form of words or any other form of expression

towards a particular race; secondly, provocation of violence into the minds of people on the basis of religion and thirdly, it based on extreme nationalism and ethnicity. Gay rights movements have seen widespread criticism from traditionalists and hence, homophobic speech also falls within the ambit of hate speech.^{vi}

COMPARATIVE ANALYSIS OF HATE SPEECH IN INTERNATIONAL PRESPECTIVE

United States of America

Hate Speech in the United States goes back to the year 1952, wherein the conflict of race was at its peak. The problem of whites and blacks go back centuries from present day as slavery created a division between the people of America. Joseph Beauharnais belonged to a White circle league of America which was a white supremacist group. He was the leader of this group and with the help of its other members, dispensed pamphlets that had called upon the Mayor of Chicago and the City council to stop the encroachment upon the property of white people by the blacks or 'Negro'. He was agitated over the issue of blacks being involved in a number of criminal activities and provoked the fellow Americans by saying that if by the method of these persuasions they do not join the cause, the criminal acts such robberies, rape and other such heinous crimes would in near future.^{vii} In Illinois, there was a provision by which any act that depicts a community or a group of people on the basis of their race, colour or ethnicity as criminals or in a derogatory manner to be held as an offence. This statute was challenged in the Supreme Court which held this provision to be constitutionally valid by a majority of 5-4.^{viii} This decision in present times does not hold out to be a good decision as this was not followed in the case of *Village of Skokie*^{ix} case in the year 2011. The members of the Nationalist Socialist Party of America were supporters of the Nazi regime and wanted to organise an event in the Skokie village of Illinois. The village had nearly seventy thousand occupants and in majority consisted of followers of Jewish religion and a also a large part of them were the surviving members of the Nazi torture. The members of the march were supposed to be dressed in the uniforms that would depict Swastika symbols on the uniforms in the form of armbands or emblems.^x The members of the Jewish community approached the court to get an injunction issued in order to be not subject to such event. The Supreme Court of Illinois refused to grant

an injunction as the information of the march that was supposed to take place was given in advance. Prior information acts as a defence for the persons carrying out events that otherwise maybe hurtful to a particular community. Such act was allowed as the members who did not wish this event to take place could simply not attend such event.^{xi} Educational institutions happen to be a breeding ground for diverse ideologies. During propagation and dissemination of their political ideologies or ideas may lead to acts that could constitute the offence of hate speech. Therefore, many institutions and colleges started enacting rules and regulations that prohibited hate speech on their premises. One of the examples of such regulations happen to be of the Stanford University wherein in the year 1990, speeches that would end up discriminating or stigmatizing any minority group or any class of people based on their race, colour or ethnicity or for that matter even their sexuality were not permitted. However, this regulation in the case of *Robert J. Corry v. Stanford University*^{xii} was struck down by the Court of California state. In the United States is *R.A.V. v. City of St. Paul*^{xiii}. In the town of Minnesota there was a provision for the offence of misdemeanour that held people liable if they planted things or objects that would otherwise be hurtful to the sentiments of any particular community based on the grounds of race, gender, ethnicity, religion or colour. In the present case, the petitioners had planted a cross in the lawn of a Negro family that were occupants of the house across their house. They wanted to convey to that black family that they were not welcome in their surroundings and did not want them as their neighbours. These miscreants would have been framed under the offence of trespass or any other offences but instead were charged under the previously mentioned misdemeanour. This provision was challenged in the court and Justice Scalia delivered the majority judgment. It was held by the court that such provision only catered the vilification of one form of speech and was limited in scope. On this basis the court struck down thus provision for discerning between different standpoints.^{xiv} In another case where a funeral service was being held for Matthew Synder, a member of American armed forces who was killed in Iraq war, a case of hate speech was witnessed. The funeral service was organised by the deceased's father and during this service, a Baptist Church of Westboro had gathered around the service area and were protesting with signs such as 'Soldier was not a homosexual', 'Priests Rape Boys', 'Thank God for IED's', 'You're going to hell', etc. The martyred soldier's father sued the Church for such discriminatory and hatred filled remarks and was awarded damages in millions as punitive damage and compensatory damages.^{xv} The theme that was portrayed by those signs and boards represented the overall characterisation of the

society and did not relate to issues that were of private nature. It is seen that even hate speech on certain topics is protected under the First Amendment of the U.S. Constitution. Since the signs shown at the place constituted to be a public place, it was given the blanket immunity under the First Amendment clause. The compensation was awarded because the symbols portrayed hurtful messages and not because of those who were holding such boards and symbols. In United States, hate speech is also protected since it is deemed essential for a progressive American society and the debate in public sphere do not vanish as they are essential for a democratic setup.^{xvi}

Canada

There are domestic laws that influenced by various international human rights-based conventions. Canada also has incorporated these fundamental rights in the form of Canadian Charter of Rights and Freedoms. Section 2 of the said charter promotes freedom of thought, expression, belief and opinion. Furthermore, this provision is also not absolute and entails restrictions upon these above-mentioned rights. Apart from this charter, the procedural laws in Canada such as the Criminal Code of Canada also take into its ambit the hatred that is spread in public domain and its propagation. There is ample amount of judicial involvement into the issue of hate speech in Canada. The Supreme Court of Canada has in the case of *Keegstra*^{xvii} held as follows:

“Parliament has recognized the substantial harm that can flow from hate propaganda and, in trying to prevent the pain suffered by target group members and to reduce racial, ethnic and religious tension and perhaps even violence in Canada, has decided to suppress the wilful promotion of hatred against identifiable groups. Parliament's objective is supported not only by the work of numerous study groups, but also by our collective historical knowledge of the potentially catastrophic effects of the promotion of hatred. Additionally, the international commitment to eradicate hate propaganda and Canada's commitment to the values of equality and multiculturalism in ss. 15 and 27 of the Charter strongly buttresses the importance of this objective”.^{xviii}

Tests devised to verify restrictions imposed upon freedom of expression. The Canadian judiciary has devised certain rules that need to be followed before imposing restrictions upon

freedom of speech. Without observation of these rules, the restrictions imposed upon can be struck down as bad in law. At few other instances, the court laid down the procedural requirements which were re-iterated in *Keegstra*^{xix} case. The Following rules need to be followed:

- (i) The restrictions that are imposed should have a connection with the problem that has been sought to be weeded out.
- (ii) The problem that has been posed to be removed should be done by imposing restrictions in a toned-down manner so that the freedom of expression is curtailed as least as possible.
- (iii) The measures taken for restricting freedoms of the citizens must be in the same proportion as the problem posed.^{xx}

There are three methods by which speech can be adjudged whether it constitutes hate speech or not. This was laid down in the year 2013 in the case of *Saskatchewan (Human Rights Commission) v. Whatcott*^{xxi}. The first test is the determination of any speech in an impartial manner from the view point of an ordinary prudent man and whether it falls under the scope of hate speech or not. The second test is that the enactments that deal with the issue of hate speech have to be seen in an intense manner such that it could not possibly leave an iota of doubt over the matter in hand. Lastly and most importantly, cases involving hate speech and the alleged hate material should be decided by the Court.^{xxii} Apart from hate speech, the Canadian law has gone a step further and brought into its ambit such content that is false and has the possibility of creating any public disorder. Information or news that is false or the person publicising such news knows that such information is not true has the probability of causing harm to the interests of the society. Such material should be prevented from being spread so as to maintain the unity in a diverse country such as Canada that houses people from across the world. Also views that support anti Jew teachings or statements tend to vitiate the ethos of social and educational institutions.^{xxiii}

South Africa

The right to freedom of speech and expression has been Constitutional status in the South African Constitution. Although there is not absolute freedom of expression as it is regulated by reasonable restrictions. Such provision is contained in Section 16 of the South African

Constitution and the reasonable restrictions are mentioned under sub-clause (2) of the aforesaid section. Hate Speech finds mention in the South African Constitution specifically as a restriction upon free speech and hence is not protected speech. Restrictions such as incitement to violence, promoting acts of aggression in the form of war or propagating hatred on the basis of race, religion, gender or ethnicity that are likely to cause violence have been cast upon as restriction upon the freedom of expression.^{xxiv} Hate speech is not limited to just mass programmes and events but exists at workplaces too. Working class is subject to discrimination based on race, religion and ethnicity. In one of such cases, *Nomasomi*, a worker was subject to hate speech and for such inhuman treatment got awarded damages. The South African court of equality awarded such damages based on section 10 of the Prevention of Unfair Discrimination Act. This provision specifically disallows people from carrying out acts that are hurtful or likely to be hurtful or promote hatred via any medium of communication. Advocating or propagation of any of discriminatory ideas is held to be liable under law.^{xxv}

INTERNATIONAL TREATIES AND CONVENTIONS

European Council

Article 11^{xxvi} of the Council of Europe happens to be the most prominent provision that establishes freedom of expression as one of the essential values to human right. But there are other conventions, whether binding or non-binding they are promising from the viewpoint of human rights. State that are signatory to such conventions are expected to provide the minorities of their country to be at the same footing as the majority are. Eliminating discrimination is the one of the most basic duty of a modern state in 21st century. Xenophobia is the propagation of ideas that promote hatred towards a particular nation. The messages that promote xenophobic approach or at times racist content are to be held as criminally liable offences under the domestic laws of various signatory countries. Furthermore, messages that justify genocide in any part of the world should constitute hate speech and person transmitting such information should be held liable.^{xxvii} Although the council can resort to the existing treaties, it also drafts recommendations through which the Minister's council drafts regulations for its various parties. These are of non-binding nature but they act as guiding principles in eliminating discrimination of any form.^{xxviii} Following are the observations:

“Recommendation (97)20 is based on eliminating hate speech and takes into its ambit any form of hatred such as hatred based on race, xenophobic approach or anti Jews views. Adopted on 30th October 1997, it condemns the above mentioned forms of hate speech and casts the liability on the maker of such hate speech as well as responsibility on the media to promote such news that serves public interest”.^{xxix}

“Recommendation 1805(2007) is a recommendation for acting against insults based on religion and hate speeches on the basis of religion which was adopted on 29th June, 2007. The parliamentary assembly prescribes penalising such acts of hate speech that promote hatred or insults that target people on the ground of their religion. It also casts responsibility on the States to make provisions for tackling such menace under their domestic law”.^{xxx}

International Covenant on Civil and Political Rights

Article 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR) specifically deals with the issue of freedom of speech and expression and hate speech. While article 19 deals with the guarantee of freedom of speech and expression, article 20 on the other hands specifically deals with the problem of hatred in the society. Any advocacy of hatred is prohibited as per the provisions of article 20. Therefore, it deems fit that Article 19 and 20 be read together to deal with the issue of hate speech and freedom of speech.^{xxxii} Article 19 brings with itself certain tests that are required for adjudging restrictions that are necessary for regulation of speech in a modern setup. The method to adjudge involves a three step test. Firstly, in order a restriction is imposed, it should be in accordance with the law that is specifically provided in a statute or law. Secondly, such restriction must be imposed to tackle the issue of public order and morality. Also, if the state is imposing such restriction it can do so in the case of national security or friendly relations with other states. Lastly, the state should show that the restrictions imposed are the minimal steps taken for achieving goals that are proportionate to such limitations.^{xxxiii} Article 20 deals with the issue of propagation of hate on the lines of extreme nationalism. It mentions that it is prohibited for people to insist upon advocacy of war and any acts of aggression. Dealing with the issue of Xenophobia, it specifically bars any such action if such speeches propagating hatred or acts of aggressions lead to incitement of violence or hate or the worst discrimination in the community. The act of

spreading hatred alone is not held to violative of this article but it the incitement or the provocation it brings with itself that is held as violative.^{xxxiii}

In 1996, a case *Robert Faurisson v. France*^{xxxiv} came up in France that dealt with the violation of article 20. In this case, a professor was following the negation method and hence, denied any acts of genocide and Nazi holocaust in the class filled with students. He defended himself by saying that such act of anti-semitism is restricting his fundamental freedom of speech and historical research. But it was held that this act was consistent with the laws in France and was violative of the principle enshrined in the covenant.

Universal Declaration of Human Rights

Article 7^{xxxv} of the UDHR guarantees equality to all human beings in the form of their right against discrimination along with any provocation to discrimination is held to violative of this principle. Article 29^{xxxvi} of the UDHR allows certain restrictions to be cast upon various freedom and rights so as to maintain peace and tranquillity. Furthermore, issues of morality and public order vary from place to place and hence, certain restrictions that are reasonable can be imposed in accordance with law. Lastly it has been more specifically mentioned that restrictions cannot go against the principles of the United Nations.

United Nations

Although International Covenants have existed, the Human Rights Committee (HRC) under the aegis of United Nations has made certain recommendation that validate various conventions. The most prominent out of these recommendations are those based upon Article 19, 20 of the International Covenant on Civil and Political Rights (ICCPR) and Article 4 of the Elimination of all forms of racial discrimination.

General Comment No. 10: The HRC stated the following with regard to Article 19^{xxxvii} that deals with freedom of expression as follows: “*Paragraph 3 expressly stresses that the exercise of the right to freedom of expression carries with it special duties and responsibilities and for this reason certain restrictions on the right are permitted which may relate either to the interests of other persons or to those of the community as a whole*”.^{xxxviii}

Establishing nexus between Article 19 and 20 of the covenant, the HRC took note of various war propagandas that exists throughout the world and the xenophobic approach that has caused hatred amongst people of different nations and mentioned the following: *“Article 20 of the Covenant states that any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. In the opinion of the Committee, these required prohibitions are fully compatible with the right of freedom of expression as contained in article 19, the exercise of which carries with it special duties and responsibilities. The prohibition under paragraph 1 extends to all forms of propaganda threatening or resulting in an act of aggression or breach of the peace contrary to the Charter of the United Nations, while paragraph 2 is directed against any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, whether such propaganda or advocacy has aims which are internal or external to the State concerned. For article 20 to become fully effective there ought to be a law making it clear that propaganda and advocacy as described therein are contrary to public policy and providing for an appropriate sanction in case of violation”*.^{xxxix}

While the Committee on elimination of racial discrimination presented its report and recommended that the states should strive harder to tackle the problems related to hatred spread due to hate speeches that promote racial discrimination and xenophobic ideas. It also mentioned to eliminate such targets that are mostly targeted on the lines of their minority status and the stigmatization that follows these attacks should be looked into and eliminated.^{xi}

JUDICIARY ON HATE SPEECH

The Courts have devised three tests that it follows while it contemplates whether a speech adds up to hate speech or not. When it has been set up that there has been impedance with freedom of expression, the courts resort to a three-step investigation to decide the Constitutionality of such obstruction. These restrictions should be reasonable and should be backed by law.^{xii}

- (i) The law that permits the restriction upon article 10 of ECHR must be recommended by some statute. It must be followed true to its letter so that the citizens can regularise their conduct as per the restrictions imposed upon. This has to be

observed so that the consequences arising out of such impositions can be foreseen and conduct regularised in accordance with law.^{xlii}

- (ii) The restrictions cast upon the freedom of speech should be in consonance with the problem sought to be weeded out. The reason for which such the right is curtailed should be reasonable as has been held in the *Handyside*^{xliii} judgment. If such restriction does not mitigate the problem, then it can be challenged in the court of law and the judges can decide upon the same keeping in mind the circumstance and facts of the case.
- (iii) Every Constitution and every covenant have some values enshrined that continue to guide the legislators across the globe. These pious values should be kept in mind while imposing restrictions upon such inviolable and intrinsic fundamental freedoms that form the backbone of a modern democratic society. Furthermore, it has to be seen that the speech so curtailed is done so after following all the investigative methods as all the speech have been kept on the same pedestal. This approach extends the liberal and Dworkin's view about free speech.

The rationale behind imposition of restrictions is to be judged on two levels. First, it has to be investigated whether such restriction imposed was required or not. Second and most importantly, whether such action is permissible in a modern democratic setup or not.^{xliv} Putting all kinds of speeches, offensive and legitimate one's on the same footing is violative of the equality principle: "equals amongst equals". The Union has strived to strike a balance between these two composites of society. The ECHR has not defined 'hate speech' but has made shift in its approach of keeping all kinds of speeches on an equal footing to an approach where speeches are to be judged in the manner they are made. This leads to the point that 'Hate Speech' is not protected by Article 10 of the covenant, thereby shifting the burden of establishing the elements of hate speech on the judiciary.^{xlv}

HATE SPEECH AND TOTALITARIANISM

Society's progress and so do the political philosophy along side. In Europe, the revival of socialism was seen and the democratic order was being challenged through the measures of totalitarianism. Such political ideology was held as being contrary to the provisions of

the convention and article 17 of the European Convention had to be casted upon. The court in the case of *Communist Party (KPD) v. the Federal Republic of German*^{xlvi} held that such ideology is not in consonance with the democratic principles and are against human rights. Article 17 mentions that the provisions of the convention do not in any way empower the states to strike upon the fundamental freedoms of the citizens from more than that is held as permissible according to the convention. Basically, no state or even person can go beyond the reasonable restrictions and cast such impositions that violate the human rights.^{xlvii} In the above mentioned case, communist ideology was being spread by utilising the mass movement underway and paved way for dictatorship. It was the time of cold war and such act would have impaired the government in power to deal with widespread atrocities. Thus activities that in the guise of mass movements spread socialism would be contrary to the convention.^{xlviii}

HATE SPEECH AND NEGATIONISM

Negationism is a derivate of the word negation. It means to refuse to particular event, mostly historical. Free speech has been violated at many instances whereby heinous crimes such the genocide of Jews: The Holocaust has been held to be not ever occurred and deny any such crime. Such speech has been held to be violative as it equivocates the Anti-Semitism views. There is a rise in the speakers that not only condone the acts of genocide but even pacify with such acts.^{xlix} In the case of *Honsik v. Austria*¹, the commission arrived at the decision that the views expressed in the published book propagates the idea that the holocaust never occurred and that there was no organised mass killings of Jews. These statements were held to violative of the basic essentials of peace and tranquillity and promote racial discrimination.^{li} Furthermore, in *Lehideux and Isorni v. France*^{lii} any remarks that are made against the ideals enshrined in the covenant and those which promote views that are in favour of Nazi's are held to be against the Article 10 and 17, as has been held in the case of *Lehideux*^{liii}. The court in this case held that any views that promote Anti-Semitism or any form of racism are against the covenant itself holding covenant as fundamental in upholding human rights. Denial of heinous acts is denial of the basic values casted in the covenant.

HATE SPEECH AND RACISM

Other than revision of historical events, the European court used Article 17 as a means to nudge the attempts of racial discrimination that was beyond the scope of negationism and constituted racial hate speech. In *Glimmerveen*^{liv} case, the court went on to use article 17 as a means to nudge the argument that article 10 saved the speech in question. The document unmistakably included components of racial separation and hence couldn't depend entirely upon Article 10. For this situation, the applicants had been indicted for having flyers routed to "White Dutch people", which would in general ensure that each one that was not white left the Netherlands. In another prominent case namely, *Jersild*^{lv}, that dealt with racial hate speech, the court held that people who belonged to the group called 'Greenjackets' were convicted and their act of racial hate speech was not protected under article 10 of the covenant. In first of its case, the court applied article 17 in the attack that was aimed at persons belonging to Muslim religion. This was the *Norwood*^{lvi} case, wherein the appellant had hung out a poster on his house's window that depicted the event of 9/11 September attacks and mentioned that Islam, (depicted by their religious symbol of crescent moon and a star) should step out of British soil. The court explained that this was stereotyping a religion and attributing an act of terrorism and linking it to a religion is beyond any saving of Article 10 and held it to be violative of article 17.^{lvii}

CONCLUSION

Now we may come to the conclusion that there is no uniformity on this particular issue. However, the positive outcome that can be drawn from this is that there is an existing legal framework in global scenario to tackle the menace of hate speech. The Conventions and the International Organisations presently monitor the legal framework chalked out by them and serve as a guiding principle to those countries that are signatory as well as to those that are still lagging behind in setting up legal framework for tackling these issues efficiently.

REFERENCES

- ⁱ Anne Weber, *MANUAL ON HATE SPEECH*, p. 1.
- ⁱⁱ Article 10 “Freedom of expression” (1) everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.
- ⁱⁱⁱ *Jersild v. Denmark* [GC], Series A No. 298, para 30.
- ^{iv} *Gündüz v. Turkey*, No. 35071/97, para 40, CEDH 2003-XI.
- ^v Anne Weber, *MANUAL ON HATE SPEECH*, p. 2.
- ^{vi} *Ibid.*
- ^{vii} Abhinav Chandrachud, *RHETORIC OF REPUBLIC: FREE SPEECH AND THE CONSTITUTION OF INDIA*, Penguin Books (2017), p. 244.
- ^{viii} *Beauharnais v. People of the State of Illinois*, 343 US 250 (1952).
- ^{ix} *Village of Skokie v. Nationalist Socialist Party of America*, 562 US 443 (2011).
- ^x Abhinav Chandrachud, *RHETORIC OF REPUBLIC: FREE SPEECH AND THE CONSTITUTION OF INDIA*, Penguin Books (2017), p. 246.
- ^{xi} *Ibid.*
- ^{xii} No. 740309.
- ^{xiii} 505 US 377 (1992).
- ^{xiv} *Ibid.*
- ^{xv} *Snyder v. Phelps*, 562 US 443 (2011).
- ^{xvi} Abhinav Chandrachud, *RHETORIC OF REPUBLIC: FREE SPEECH AND THE CONSTITUTION OF INDIA*, Penguin Books (2017), pp. 246-247.
- ^{xvii} *R. v. Keegstra*, (1990)3 SCR 697.
- ^{xviii} *Ibid.*
- ^{xix} *R. v. Keegstra*, (1990)3 SCR 697.
- ^{xx} *Ibid.*
- ^{xxi} 2013 1 SCR 467.
- ^{xxii} Anne Weber, *MANUAL ON HATE SPEECH*, p.27.
- ^{xxiii} *Ross v. New Brunswick School District*, 1996 1 SCR 825.
- ^{xxiv} Section 16, *CONSTITUTION OF SOUTH AFRICA*.
- ^{xxv} *Gloria Kentev. Andre van Deventer*, 9626 (2015) *Derebus* 45.
- ^{xxvi} Article 11 “Freedom of expression and information” (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
(2) The freedom and pluralism of the media shall be respected.
- ^{xxvii} *Ibid.*
- ^{xxviii} Anne Weber, *MANUAL ON HATE SPEECH*, p. 10.
- ^{xxix} Michael Herz, *THE CONTENT AND CONTEXT OF HATE SPEECH: RETHINKING REGULATIONS AND RESPONSES*, Cambridge University Press (2012), p. 475.
- ^{xxx} Russell Sandberg, *RELIGION AND LEGAL PLURALISM*, Routledge (2016), p. 182.
- ^{xxxi} Article 19 (1) Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regard less of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by

law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.

^{xxxii} Ibid.

^{xxxiii} Anne Weber, *MANUAL ON HATE SPEECH*, p. 14.

^{xxxiv} CCPR/550/1993 (1996).

^{xxxv} Article 7 All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

^{xxxvi} Article 29 (1) everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

^{xxxvii} Article 19 INTERNATIONAL COVENANT OF CIVIL AND POLITICAL RIGHTS (ICCPR), 1966.

^{xxxviii} Ibid.

^{xxxix} Article 20 (1) Any propaganda for war shall be prohibited by law.

(2) Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

^{xl} Ibid.

^{xli} Russell Sandberg, *RELIGION AND LEGAL PLURALISM*, Routledge (2016), p. 185.

^{xlii} *Delfi AS v. Estonia*, Application no. 64569/09.

^{xliiii} *Handyside v. United Kingdom*, Application no. 5493/72(1976).

^{xliv} Anne Weber, *MANUAL ON HATE SPEECH*, p. 22.

^{xlv} *Id.*, at p. 24.

^{xlvi} 9626 (2015) *Derebus* 45.

^{xlvii} Article 17 "Prohibition of abuse of rights": Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

^{xlviii} Anne Weber, *MANUAL ON HATE SPEECH*, pp. 23-24.

^{xlix} Ibid.

^l *Honsik v. Austria*, No. 25062/94, decision of the Commission of 18 October 1995.

^{li} Anne Weber, *MANUAL ON HATE SPEECH*, p. 25.

^{lii} *Lehideux and Isorni v. France* [GC], judgment of 23 September 1998

^{liii} Ibid.

^{liv} *Glimmerveen and Hagenbeek v. the Netherlands*, Nos. 8348/78 and 8406/78, p. 187.

^{lv} *Jersild v. Denmark*, para. 35.

^{lvi} *Anthony Norwood v. the United Kingdom*, Application no. 23131/03 (2004).

^{lvii} Anne Weber, *MANUAL ON HATE SPEECH*, p.27.