

Formulating a Definition of Hate Speech: From Divergence to Convergence

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Abstract : Numerous incidents, ranging from trivial to catastrophic, do come to mind when one reflects on hate. The victims of these belong to specific identifiable groups within communities. These experiences evoke discussions on Islamophobia, xenophobia, homophobia, anti-Semitism, racism, ethnic hatred, atheism, and other brutal forms of bigotry. Common to all these is an invisible but portent force that drives all of them: hatred. Such hatred is usually fueled by a profound degree of intolerance (to diversity) and the zeal to impose on others their beliefs and practices which they consider to be the conventional norm. More importantly, the perpetuation of these hateful acts is the unfortunate outcome of an overplay of invectives and hate speech which, to a greater extent, cannot be divorced from hate. From a legal perspective, acknowledging the existence of an undeniable link between hate speech and hate is quite easy. However, both within and without legal scholarship, the notion of "hate speech" remains a conundrum: a phrase that is quite easily explained through experiences than propounding a watertight definition that captures the entire essence and nature of what it is. The problem is further compounded by a few factors: first, within the international human rights framework, the notion of hate speech is not used. In limiting the right to freedom of expression, the ICCPR simply excludes specific kinds of speeches (but does not refer to them as hate speech). Regional human rights instruments are not so different, except for the subsequent developments that took place in the European Union in which the notion has been carefully delineated, and now a much clearer picture of what constitutes hate speech is provided. The legal architecture in domestic legal systems clearly shows differences in approaches and regulation: making it more difficult. In short, what may be hate speech in one legal system may very well be acceptable legal speech in another legal system. Lastly, the cornucopia of academic voices on the issue of hate speech exude the divergence thereon. Yet, in the absence of a well-formulated and universally acceptable definition, it is important to consider how hate speech can be defined. Taking an evidence-based approach, this research looks into the issue of defining hate speech in legal scholarship and how and why such a formulation is of critical importance in the prohibition and prosecution of hate speech.

Keywords : hate speech, international human rights law, international criminal law, freedom of expression

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