

FREEDOM OF EXPRESSION AND THE CHALLENGE OF HATE SPEECH IN NIGERIA

Oluremi Savage, LLB *

Abstract

Hate speech presents a fundamental tension within constitutional democracy, particularly in plural societies where ethnic and religious divisions amplify the consequences of hostile expression. This article analyses the conflict between freedom of expression and the regulation of hate speech in Nigeria, arguing that the absence of a clear legislative framework has produced doctrinal uncertainty and inconsistent enforcement. While freedom of expression remains indispensable to democratic governance, it has never operated as an unlimited right, and its exercise must be reconciled with the protection of dignity, public order, and social cohesion. The article analyses Nigeria's legal position alongside comparative perspectives from the United States and South Africa, demonstrating how different constitutional traditions respond to the relationship between speech, violence, and state power. It is argued that effective regulation requires a principled distinction between offensive expression, unlawful incitement, and speech that poses a genuine threat to equality and security. The article concludes that Nigeria requires a more coherent legal and institutional response to hate speech, anchored in clarity and proportionality, and that such a response must extend beyond legislation to encompass the responsibilities of government institutions, the media, civil society, and digital platforms in reducing the normalisation of hate driven expression within democratic public life.

Keywords: Hate Speech, Freedom of expression, violence and democracy.

* Public and Private Law Department, Faculty of Law, Lagos State University, Ojo, Lagos, Nigeria. :
remisavage@yahoo.com; oluremi.savage-oyekunle@lasu.edu.ng 08023139450

Introduction

Freedom of expression is one of the natural rights of mankind and essential to democratic governments. Founded on respect for the autonomy and dignity of human beings, the right gives rise to other fundamental rights, ranging from the rights to equality, security, privacy, to rights of citizenship and participation in society.¹

The freedom of expression extends to seeking, receiving, and communicating information and ideas of every kind, irrespective of national boundaries, whether conveyed orally, in writing, through artistic expression, or by any other chosen medium of expression. Freedom of expression is recognised as a fundamental right and preserved in several national,² international and regional instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights (ECHR) and the African Charter on Human and Peoples Rights; all adopted after the end of World War II.³ Article 19 of the ICCPR recognises both the right to hold opinions free from interference and the right to freedom of expression. The African Charter on Human and Peoples Rights on its part recognises the right to freedom of expression through the provision that every individual shall have the right to receive information and every individual shall have the right to disseminate his opinions within the law.⁴ The ECHR notes that everyone has the freedom to hold opinions and impart information without interference by public authority regardless of frontiers.

¹ S J Heyman, *Free Speech and Human Dignity*, Yale University Press, (New Haven & London, 2008) <http://ssrn.com/abstract=1107254>, accessed 26th December 2025.

² Sec 39 of the 1999 Constitution of the Federal Republic of Nigeria; sec 16 South Africa Bill of Rights 1996; First Amendment to the U.S. Constitution (ratified 1791).

³ Art 19 UDHR, Art 19 ICCPR, Art 13 CRC, Art 21 CRPD, Art 9 African Charter, Art 10 ECHR, Art 13 American Convention on Human Rights amongst others.

⁴ (As above).

In South Africa, the protection of freedom of expression is very important as the country has a chequered history of discrimination flagged by segregation and apartheid.¹ In the United States, freedom of expression was one of the major reasons for the First Amendment of the United States Constitution and it provides that:

*Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*²

However, despite the importance attached to this right, it is necessary to state that its enjoyment is not absolute as there are several recognised limitations to it and one of such is Hate Speech.³

Although freedom of expression recognises the right of people to hold opinions and impart information regardless of borders and is thus essential for democracy, it is also paramount to understand that it is necessary to consider the right of other citizens to protect their reputation from damaging speech whether online or off it. South Africa has a law enacted specifically to deal with hate speech.⁴ The United States does not have a law on hate speech but regulates the ambit of free speech through the courts. The situation in Nigeria has remained chaotic due to the several oppositions the proposed hate speech bill⁵ as garnered. Thus, hate speech is currently handled in the country under the Cybercrime Act of 2015⁶ and other criminal code provisions relating to public order.

It is important to state that hate speech can lead to great harm which can never be rectified if not curbed and most instances, the institution of civil actions tend to achieve little or no effect in curtailing its menace. Thus, there is need to prohibit and criminalise speech that

¹ South Africa History Online _A history of Apartheid in South Africa_ (2016) <https://www.sahistory.org.za/article/history-apartheid-south-africa>. Accessed 24th January 2026.

² First Amendment to the United States Constitution.

³ UN _What is Hate Speech?_ <https://www.un.org/en/hate-speech/understanding-hate-speech/what-is-hate-speech>. Accessed 24th January 2026.

⁴ The Prevention and Combating of Hate Crimes and Hate Speech Act 2023.

⁵ See the Hate Speech (Prohibition) Bill, 2019 (HB.246).

⁶ Cybercrimes (Prohibition, Prevention, etc.) Act 2015.

are likely to offend, humiliate or intimidate other persons particularly when the offending speech is targeted at the affected people because of their colour, ethnicity or nationality etc.

Freedom of Expression

The right to express opinions without restraint, is a democratic ideal that dates to ancient Greece.⁷ Globally, communication is a key means of receiving and passing information from one person to another or between groups of persons either through spoken words, print or media. Freedom of speech, like freedom of expression is central to the defence of all human rights. As it doesn't just enable the defence of rights and exposure of human rights abuses, but it also promotes good governance, public accountability and combats corruption. The United Nations General Assembly (UNGA) notes that the —freedom of speech is a fundamental human right and the touchstone of all the freedoms to which the United Nations (UN) is consecrated⁸.

The justification from Democracy is premised on the conviction that freedom of expression serves an indispensable function in the process of democratic self-government.⁹ Without the freedom to convey and receive ideas, citizens cannot successfully carry out the task of democratic self-government. Free expression also assists the government in realising its fundamental objectives for good governance. The enjoyment of the right to freedom of expressions serves several purposes one of which is that it helps to make government accountable. In most cases, while the government, would often through its media outfits, prefer to paint rosy pictures than expose the inadequacies of their governance, freedom of expression allows them to live up to the responsibilities owed to their citizens. Another rationale for the freedom of expression is that it creates a marketplace of ideas and ensures individual development and self-fulfilment.¹⁰ This is in addition to the fact that the

⁷ J Mchangama, *Free Speech: A History from Socrates to Social Media* (2022) <https://heterodoxacademy.org/blog/free-speech-a-history-from-socrates-to-social-media/> Accessed 3rd December 2025.

⁸ Resolution No. 59 of the UNGA, adopted in 1946.

⁹ The principal exponent of this view was Alexander Meiklejohn, in his *Free Speech and its Relation to Self-Government* (1948).

¹⁰ *Abrams v United States* 1919 US 250 616.

enjoyment of this right enables humans to express new ideas and discoveries which enhances scientific, artistic and cultural progress.¹¹

Despite the numerous benefits that exist with the enjoyment of the right to freedom of expression, the need to regulate its enjoyment in societies to protect other values such as public order, public morality, justice and protect the personal rights of others cannot be overstated.¹² While the Nigerian constitution expressly provides for the freedom of expression and liberty of every Nigerian without restrictions, restraint, fear of punishment or intimidation in Nigeria;¹³ the joint reading of sections 39(3) and 45(1) still restricts the enjoyment of the right in order to protect confidential information, maintain court authority, regulate the media, uphold public order and ensure public safety amongst others.

It was held by the Court of Appeal in the case of *Duke v. Governor of Cross River State*,¹⁴ that pursuant to section 39 of the Constitution, people can validly stage a demonstration to express their distrust in government so long no law will be broken, and nothing will be destroyed in the process. Also, in *The Speaker, Bauchi State House of Assembly v. Danna*,¹⁵ the respondent, a member of Bauchi State House of Assembly, was placed on indefinite suspension by the house for alleged derogatory remarks she made while speaking on the floor of the Assembly. In voiding the indefinite suspension, the Court of Appeal held that the action of the appellants violated the respondent's right to freedom of speech. The court emphatically held that:

If derogatory remarks or comments are not permissible or tolerated by the Bauchi State House of Assembly, that in itself is a violation of the freedom of expression, to hold opinions, to receive and impart ideas, etc., under Section 39(1) of the Constitution. What the appellant did also constitute an unwarranted attack on freedom to disseminate information, ideas and opinions. The Speaker and members of the Bauchi State House

¹¹ C Roux et al, *Human Rights Literacy: Quest for meaning* (2015) https://www.researchgate.net/publication/278017216_Human_Rights_LiteracyQuest_for_meaning_Projec t. Accessed 21st January 2026.

¹² J. Dugard, *Human Rights and the South African Legal Order*, The Princeton Legacy Library), 1978.

¹³ Sections 22, 39 (1), (2) of the Nigerian Constitution 1999.

¹⁴ (2009) ALL FWLR (Part 488)252 @ 279 C.A

¹⁵ Unreported, Appeal No. CA/J/207/2013 decided on the 3/12/2014.

of Assembly ought not to have slammed an indefinite suspension on the respondent in this circumstance where the constituency had the interest to protect. In a democracy, conscious objectors must be tolerated. Their rights must not be trampled upon. The majority may not always be right. For example, in courts, dissenting judgments at times lay the foundation for amendment of the Constitution, statutes or rules by the legislature. For democracy to nurture in Nigeria, the opposition must be heard.

The South African Constitution brought about a move away from an authoritarian culture to one of openness, accountability and justification of actions and the freedom of expression is one of the rights guaranteed in its Bill of Rights and it recognises the right of everyone to freedom of expression, which includes freedom of the press and other media; freedom to receive or impart information or ideas; the freedom of artistic creativity; academic freedom and freedom of scientific research.¹⁶ Thus, South Africans are allowed to share any information they feel is necessary in exercise of their rights to express and access ideas. Likewise, media outfits can publish their opinions so far it is within allowed legal frameworks i.e. the expression does not constitute a propaganda for war or incitement to violence.¹⁷

It is necessary to state that the protection of the right to freedom of expression is important in South Africa because for many years, citizens were denied the freedom of expression and in some instances sued for speaking out against the Apartheid government.¹⁸ The apartheid system was based on the idea of separate development for South Africa's racial communities. While it was formally portrayed as supporting equal advancement and cultural independence, the way it was enforced made such equality impossible in practice.¹⁹ Infact, the apartheid regime, sustained through laws that compelled racial groups in the country to live separately and pursue development along separate, deeply unequal lines; also aimed to eliminate interracial marriage and restrict social interaction between racial

¹⁶ Section 16(1) South African Constitution 1996.

¹⁷ Section 16(2) South African Constitution 1996; Y M Burns 'Freedom of expression under the new constitution' (1997) 30(3) *Comparative and International Law Journal of Southern Africa* 264-286.

¹⁸ V Vollenhoven *et al*, *The Right to Freedom of Expression: The Mother of Our Democracy* (2015) 18(6) *Potchefstroom Electronic Law Journal* 2300.

¹⁹ South Africa History Online 'A history of Apartheid in South Africa' (2016) <https://www.sahistory.org.za/article/history-apartheid-south-africa>. Accessed 24th January 2026.

communities.²⁰ Beyond its legal structure, apartheid functioned as a broader social order that systematically oppressed most of the population based on race. Those classified as non-white were deliberately subjected to severe deprivation and were often kept in conditions barely above extreme poverty.

In the United States, the protection of civil rights, including freedom of speech²¹ was introduced with the First Amendment Bill of Rights which provides that —*Congress shall make no law... abridging the freedom of speech, or the press...*||²² The First Amendment guarantees free speech and broadly protects the communication of ideas and information. At its core, it ensures that individuals may voice opinions, including those that are unpopular or offensive, without state suppression. Also, the protection of freedom of speech extends beyond spoken and written expression to other forms of communication, such as artistic works and media content. The right in addition, covers certain forms of symbolic expression, where conduct itself conveys meaning; a common example is flag burning, which has been recognised as protected expression under the First Amendment.²³ Thus, the United States courts are not only careful in declaring actions or conducts as constituting hate speech but have also gone ahead in some instances to declare cases brought before it as null and void and an attempt to limit or repeal the First Amendment.²⁴

Limitation to Freedom of Speech

It is instructive to note that freedom of expression is not absolute. Several persons indulge in hate speech under the ‘guise’ of exercising their constitutional right of speech.²⁵ However, there is need to understand that while exercising the freedom of expression, there is need to consider the right of other citizens to protect their reputation. As a rule, speakers are required to respect the fundamental rights of others. In this way, the same ideals that

²⁰ Population Registration Act, 1950, Group Areas Act, 1950, Promotion of Bantu Self-Government Act, 1959, Prohibition of Mixed Marriages Act, 1949, Immorality Amendment Act, 1950 and Separate Representation of Voters Act, 1951.

²¹ The United State uses the term Freedom of Speech in place of Freedom of Expression.

²² The First Amendment was ratified on 15 December 1791.

²³ *Texas v. Johnson* 491 U.S. 397 (1989).

²⁴ *RAV v. City of St. Paul* (1992).

²⁵ I O. Francis *et al*, ‘Application of the laws of defamation and sedition in Nigeria’s jurisprudence: Still relevant?’ (2017) 8(1)(23) *Journal of Advanced Research in Law and Economics* 59 – 68.

justify freedom of speech also allows for determination of the limits of that freedom.²⁶ Like all rights, free speech is limited by the rights of others due to likely conflict between the individual right to free speech and ‘social interests’ such as dignity and equality.²⁷ Thus, the courts have a vital role to play in balancing the conflicting interests between freedom of expression and protection of reputation under the law.

In the United States, although the First Amendment guarantees free speech, the United States, like all modern democracies, where necessary, places limitation on this freedom. In *Chaplinsky v. New Hampshire*,²⁸ the US Supreme Court held that insults addressed to an individual that are so offensive as to readily prompt a violent reaction did not fall within the ambit of constitutionally protected speech.

In the Republic of South Africa, the constitutional right to freedom of expression is not absolute, and is subject to limitation as the right in section 16(1) does not extend to propaganda for war; incitement of imminent violence; or advocacy of hatred that is based on race, ethnicity, gender or religion, or that constitutes incitement to cause harm.²⁹ In addition, the constitution contains a general limitation clause, which permits the limitation of a fundamental right so far it is justifiable and based on the principles of human dignity, equality and freedom.³⁰ Recognising the importance international human rights conventions play in setting standards for state parties; the constitution specifically provides that in interpreting the rights contained in the Bill of Rights, the courts are to always make reference to international law and other relevant foreign law.³¹

Just like in the United States and South Africa, the freedom of speech is not absolute in Nigeria as any restriction on the right to freedom of speech must be justifiable and in the

²⁶ S J. Heyman (n 2 above).

²⁷ As above.

²⁸ (1942) 315 U.S. 565.

²⁹ Section 16(2) South African Constitution.

³⁰ Section 36 South African Constitution.

³¹ Section 39(1)(b) & (c) South African Constitution; Burns (n 21 above).

interest of public safety, public order, defence, public morality or public health or to protect the rights and freedom of other people.³²

In addition, judicial decisions have interpreted Section 39 of the Constitution not to grant absolute right of freedom of expression in Nigeria but it's rather a qualified right providing for punishment to persons if they overstep their limits. In *Olawonyin v. A.G. of Northern Nigeria*,³³ the Court held that for a restriction upon fundamental human right to be considered justifiable, it must be necessary in the interest of public morality and not be excessive or out of proportion to the object which is seeks to achieve. Also, in *Okedara v. Attorney General of the Federation*,³⁴ the applicant filed an application challenging the constitutionality of Section 24(1) of the Cybercrime (Prohibition), (Prevention) Act.³⁵ The law criminalises sending grossly offensive, obscene, menacing, or knowingly false electronic messages intended to cause harm, with penalties of up to ₦7 million in fines or three years' imprisonment. The applicant argued the provision was vague and violated constitutional rights to free expression and fair hearing. The Court rejected this, holding that while cybercrime cannot be precisely defined, the restriction is justified under section 45 of the Constitution as necessary for public safety, order, morality, health, and defence.

Hate Speech

Hate speech as a speech designed to promote hatred on the basis of race, religion, ethnicity or nationality poses vexing and complex problems for contemporary constitutional rights.³⁶ A menace to democratic values, social stability and peace; it's spread must be decisively tackled at the earliest stage in order to prevent escalation into armed conflict, terrorism and other grave violations of human rights.

The definition of the term; hate speech has been far from uniform as the boundaries between impermissible propagation of hatred and protected speech vary from one setting to

³² J O & J D —Freedom of the Press in Nigeria since 1960: A Comparative Analysis' (1976) 18(4) *Journal of the Indian Law Institute*.529-550.

³³ (1961) 1 ALL Nigerian Law Report 182.

³⁴ (2019) LCN/12768(CA).

³⁵ (n 10 above).

³⁶ M Rosenfeld, *Hate Speech in Constitutional Jurisprudence: A Comparative Analysis*, (2003) 24 *Cardozo Law Review* 1523.

the next depending on the country, society or culture involved. The South African Human Rights Commission on its part defined hate speech as ‘an expression which goes beyond mere insults or offensive language, and which may infringe the dignity of certain persons or groups’.³⁷ However, due to the lack of uniformity of definition, Benesch³⁸ explains that any form of expression or speech that can increase the risk that its audience will condone or commit violence against members of another group can be regarded as dangerous³⁹ (hate) speech.

She further notes the existence of five variables that are relevant for determining whether a speech/statement can be classified as dangerous or not. The variables are; whether there is a ‘powerful speaker with a high degree of influence’; there is a receptive audience with ‘grievances and fear that the speaker can cultivate’; there is a speech act ‘that is clearly understood as a call to violence’; there is a social or historical context that is ‘propitious for violence, for any of a variety of reasons’ and finally, whether there exists an ‘influential means of dissemination’. According to her, understanding the five elements enumerated above is not only necessary for identifying how dangerous speech operates but also useful for determining the appropriate interventions that may be adopted to douse whatever tensions that might arise as a result of the offending speech.⁴⁰

There are also efforts in international instruments to define hate speech. The European Union’s ‘Framework Decision on Combating Certain Forms and Expressions of Racism and Xenophobia by means of Criminal Law’⁴¹ instructs state parties to regard any public incitement to hatred or violence on the basis of religion, ethnicity, colour etc. as hate speech that is criminal in nature and should therefore attract appropriate sanctions. The framework thereafter enumerates three categories of actions/expression that can be categorised as hate speech and they are:

³⁷ South African Human Rights Commission, ‘Hate Speech Information Sheet’ (2020) <https://www.sahrc.org.za/home/21/files/Hate%20Speech%20Information%20Sheet-%20print%20ready-.pdf> accessed on 26th December 2025.

³⁸ S Benesch, Proposed Guidelines for Dangerous Speech, (2021) <http://dangerousspeech.org/guidelines/>. Accessed on 26th December 2025.

³⁹ Benesch prefers the term dangerous speech over hate speech because it is more precise, avoids reliance on emotion, and is easier to identify since its defining feature is the capacity to instigate harm.

⁴⁰ Benesch (note 42).

⁴¹ European Union Council Framework Decision 2008/913/JHA.

- i. public incitement to violence or hatred directed against a group of persons or a member of such group defined on the basis of race, [colour], descent, religion or belief, or national or ethnic origin;
- ii. the same, when done through —public dissemination or distribution of tracts, pictures, or other material;⁴² and
- iii. publicly condoning, denying or grossly trivializing crimes of genocide, crimes against humanity, and war crimes [as defined in EU law], when the conduct is carried out in a manner likely to incite violence or hatred against such group or a member of such group.⁴²

According to the UN Committee on the Elimination of Racial Discrimination,⁴³ hate speech involves the:

dissemination of ideas based on racial or ethnic superiority or hatred by whatever means;

- a. incitement to hatred, contempt or discrimination against members of a group on grounds of their race, colour, descent, or national or ethnic origin.
- b. threats or incitement to violence against persons or groups on the grounds noted in (b) above
- c. expression of insults, ridicule or slander of persons or groups or justification of hatred, contempt or discrimination on the grounds in (b) above, when it clearly amounts to incitement to hatred or discrimination
- d. participation in organizations and activities which promote and incite racial discrimination.

Like the European Union, the Committee on Elimination of Racial Discrimination thereafter advises state parties to adopt legislation that criminalises hate speech with the stipulation of appropriate sanctions.

The Rabat Plan of Action, developed through UN expert meetings, sets a high threshold for distinguishing free expression from incitement to hatred. It introduces a six-part test considering context, speaker influence, intent, tone and content, dissemination, and

⁴² The framework recommends a maximum of one year imprisonment as penalty.

⁴³ Para 13, Gen Recommendation No. 45 of the Committee on the Elimination of Racial Discrimination on combating racist hate speech CERD/C/GC/35.

likelihood of harm. Only when all six criteria are met should speech be criminalised; less severe cases should be addressed through administrative or civil measures rather than criminal sanctions.⁴⁴ Precision in defining hate speech is crucial because vague or overly broad definitions create loopholes that allow offenders escape accountability, and enable governments suppress legitimate dissent. Clear, narrow definitions with objective criteria protect freedom of expression and ensure effective legal enforcement.⁴⁵

Protecting reputation is tied to human dignity, this explains why Nigeria's early regulation of hate speech relied on defamation law until the Cybercrimes Act. Prosecutors can still penalise hate speech through existing case laws, statutory and common law. The courts have used broad criminal and tort doctrines to sanction speech despite constitutional protections, even though these laws were not originally designed for hate speech.⁴⁶

Jurisdictional Comparative Analysis of Hate Speech Laws

Today, several countries seek to regulate speech directly, and in so doing have endeavoured to define such speech in their criminal legislations;⁴⁷ and the similarities and differences among the definitions reveal differing policy choices on hate speech regulation, with the United States adopting a clearly different position from other Western democracies. In the United States, hate speech is given wide constitutional protection while in other Western democracies, such as South Africa and Nigeria it is largely prohibited and subjected to civil and criminal sanctions.⁴⁸

South Africa's prohibition of hate speech is rooted in its history of racial segregation, making it a vital safeguard. Beyond section 16(2)(c) of the Constitution, which explicitly

⁴⁴ Rabat Plan of Action, <https://www.istanbulprocess1618.info/rabat-plan-of-action/#:~:text=Positive%20measures%20for%20States%20to,in%20Council%20Resolution%2016/18>. Accessed 24th February 2026.

⁴⁵ *The Incorporated Trustees of Expression (Now Human Rights Initiative) v Federal Republic of Nigeria* - ECW/CCJ/JUD/37/23.

⁴⁶ *Fisher v Carrousel Motor Hotel, Inc.*, 424 S.W.2d 627, 630 (Tex. 1967).

⁴⁷ Thomson Reuters Foundation, *Weaponizing the law: Attacks on media freedom* (2023) <https://www.trust.org/wp-content/uploads/legacy/weaponizing-law-attacks-media-freedom-report-2023.pdf> accessed 24th February 2026.

⁴⁸ Rosenfeld (n 40).

bans hate speech,⁴⁹ the country has also enacted specific laws dedicated to addressing it.⁵⁰

The object of the Prevention and Combating of Hate Crimes and Hate Speech Act is to:

- a. give effect to the Republic's obligations regarding prejudice and intolerance as contemplated in international instruments
- b. provide for the prosecution of persons who commit offences referred to in this Act and provide for appropriate sentences
- c. provide for the prevention of hate crimes and hate speech
- d. provide for effective enforcement measures
- e. provide for the co-ordinated implementation, application and administration of this Act
- f. combat the commission of hate crimes and hate speech in a co-ordinated manner; and
- g. gather and record data on hate crimes and hate speech.⁵¹

The Act criminalises hate speech by making it an offence to intentionally publish, distribute, or communicate, verbally or electronically, messages intended to incite harm or promote hatred on grounds listed in section 1.⁵² Conviction carries penalties of a fine, imprisonment of up to five years, or both.⁵³ The Act balances criminalising hate speech with protecting free expression by clarifying that section 4(1) does not apply to publications made in good faith i.e. artistic works, academic or scientific inquiry, accurate reporting, religious interpretation, or information that neither advocates hatred nor incites harm.⁵⁴

To safeguard freedom of expression while prosecuting hate speech, the Act requires complainants to provide a victim impact statement detailing the psychological, physical, social, or economic effects of the hate speech on the victim or their family. This statement

⁴⁹ This subsection constitutionally justifies restricting free speech when it incites hostility that could harm specific ethnic groups.

⁵⁰ The Prevention and Combating of Hate Crimes and Hate Speech Act 2023 & The Promotion of Equality and Prevention of Unfair Discrimination Amendment Act, 2002.

⁵¹ Sec 2 Prevention and Combating of Hate Crimes and Hate Speech Act 2023.

⁵² Sec 4 Ibid.

⁵³ Sec 6(3) Ibid.

⁵⁴ Sec 4(2) Ibid.

must be submitted as evidence in court, and if unavailable, the prosecution must give reasons for its non-availability.⁵⁵

The Promotion of Equality and Prevention of Unfair Discrimination Amendment Act⁵⁶ complements South Africa's hate speech framework by specifically targeting unfair discrimination and promoting equality. Its objectives include:

- i. provide for measures to facilitate the eradication of unfair discrimination, hate speech and harassment, particularly on the grounds of race, gender and disability
- ii. provide remedies for victims of unfair discrimination, hate speech and harassment and persons whose right to equality has been infringed
- iii. provide for measures to educate the public and raise public awareness on the importance of promoting equality and overcoming unfair discrimination, hate speech and harassment.⁵⁷

In addition, the Act prohibits the advocacy of hate speech, based on race, ethnicity, gender or religion, that constitutes incitement to cause harm as contemplated in section 16(2)(c) of the constitution and section 12 of this Act.⁵⁸ Infact, section 10(1) of the Act provides that:

*subject to the proviso in section 12, no person may publish propagate, advocate or communicate words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to be harmful or to incite harm and to promote or propagate hatred.*⁵⁹

Section 10(2) of the 2002 Act treats hate speech as a civil matter, with the Equity Court empowered to refer cases to the Director of Public Prosecutions for criminal trial.⁶⁰ The later enactment of the Prevention and Combating of Hate Crimes and Hate Speech Act

⁵⁵ Sec 5 Ibid.

⁵⁶ Promotion of Equality and Prevention of Unfair Discrimination Amendment Act, 2002.

⁵⁷ Sec 2 (c)(e) & (f) Ibid.

⁵⁸ Sec 2 (b)(v) Ibid.

⁵⁹ *Qwelane v South African Human Rights Commission and Another* (CCT 13/20) [2021] ZACC 22.

⁶⁰ Secs 10(2) & 21(2)(n) Promotion of Equality and Prevention of Unfair Discrimination Amendment Act, 2002.

addressed this limitation by explicitly criminalising hate speech and attaching clear sanctions, thereby strengthening enforcement beyond civil remedies.

South Africa's approach to hate speech emphasises on its long-term dangers to social cohesion rather than only the immediate threats of violence. Thus, unlike the American view that speech is unlikely to cause serious harm and that truth will eventually prevail,⁶¹ South African courts recognise that unchecked hate propaganda can bypass reason, exploit emotions, and ultimately cause great harm if not curtailed promptly.

South Africa's treatment of hate speech diverges from the American approach in two keyways: it is rooted in different normative priorities, and in contrasting assessments of the consequences of tolerating such speech.⁶² While the U.S. view emphasises the risk of greater harm from suppressing speech short of incitement, South Africa sees the unchecked spread of hate propaganda as more dangerous, capable of inflicting lasting damage to dignity and social cohesion. Reflecting this, the South African Constitution elevates human dignity as a paramount value⁶³ and explicitly limits freedom of expression to prohibit actions that offend, humiliate, or intimidate groups, particularly on the basis of race, colour, or ethnic origin.⁶⁴

Regulation of Hate Speech in Nigeria

Freedom of expression in Nigeria, as elsewhere, applies to all, including the public and the press, but it is not absolute. It is limited to prevent harm to others and preserve law and order.⁶⁵ Because freedom of expression can be used positively and negatively; Nigeria, like other nations, recognises the necessity of regulating it to protect society while still upholding fundamental freedoms.

⁶¹ The United States does not make hate speech illegal *per se* under any definition, unlike many other Nations. See J Q. Whitman, *Enforcing Civility and Respect: Three Societies*, (2000) 109 *Yale Law Journal* 1279; C R. Sunstein, *Falsehoods and The First Amendment* (2020) 3(2) *Harvard Journal of Law & Technology* 388-426.

⁶² Rosenfeld, (n 40).

⁶³ Sec 1(a) South African Constitution. See also Art 1, German Basic Law.

⁶⁴ Sec 36(1) South African Constitution; Art. 5 (2), German Basic Law; sec 18C(1) of the Australian Racial Discrimination Act 1975.

⁶⁵ Sec 45 Nigerian Constitution 1999.

In Nigeria, the unchecked use of hate speech has long posed serious challenges, especially around sensitive issues of ethnicity, religion, and regional identity. Issues linked to the Civil War, Boko Haram, resource control, and oil politics often spark hostile reactions and deepen rivalries among major ethnic groups. Thus, in such a polarised society as ours, uncontrolled use of hate speech undermines nation-building, widens divisions, erodes trust, and weakens commitment to national goals; effects that can destabilise any economy and even extend beyond it.

Nigeria's multicultural and multiethnic character makes regulating hate speech essential, yet there is no single comprehensive legislation dedicated to it. Instead, existing laws are applied when needed. The laws include the Cybercrimes Act,⁶⁶ Electoral Act,⁶⁷ and the Nigerian Broadcasting Code.⁶⁸ Other include the offence of defamation and sedition amongst others. Under the Cybercrimes Act, it is a crime to send grossly offensive or obscene electronic messages, knowing them to be false, with intent to cause inconvenience, annoyance, or animosity. Conviction carries a penalty of up to ₦7 million in fines, three years' imprisonment, or both.⁶⁹

Similarly, the Cybercrimes Act makes it a criminal offence to distribute or make available through a computer system or network, any publication containing xenophobic remarks against a group distinguished by race, colour, religion, descent, or ethnic origin. Anyone found guilty is liable to imprisonment, a fine, or both, underscoring Nigeria's reliance on existing legislation to curb hate speech in the absence of a dedicated, comprehensive law.⁷⁰

The Electoral Act criminalises the use of abusive language, insinuations, or innuendoes during campaigns if they provoke violent reactions or emotions against religious or ethnic groups.⁷¹ This provision directly targets the role of political rhetoric in fuelling division.

⁶⁶ Cybercrime (Prohibition, Prevention etc) Act 2015.

⁶⁷ Electoral Act 2026.

⁶⁸ NBC, *Nigeria Broadcasting Code* 2019, 6th Edition, <https://www.nbc.gov.ng/nbcode/> Accessed 25th January 2026.

⁶⁹ Sec 24(1) Cybercrime Act 2015.

⁷⁰ Sec 26(1) Cybercrime Act 2015.

⁷¹ Sec 96 (1)(2) and (7) of the Electoral Act 2026.

Similarly, the Nigerian Broadcasting Code (NBC) prohibits hate speech and bans the use of media platforms to promote content that incites crime, leads to public disorder, spreads hate, or contains offensive references to individuals or organizations. It also emphasises respect for human dignity.⁷² Importantly, the Code empowers the NBC to impose sanctions on offending media platforms, ranging from warnings to fines.⁷³ However, the NBC's authority to impose fines was challenged in *Media Rights Agenda v. Nigerian Broadcasting Commission*,⁷⁴ raising questions about the legality of administrative sanctions without judicial oversight. This case highlights the tension between regulating harmful speech and protecting constitutional rights, particularly freedom of expression and due process.

Apart from the legislations discussed above, provisions relating to defamation and sedition contained in the country's criminal legislation can be used to restrict the use of hate speech. Defamation law protects an individual's reputation from unprovoked attacks. Defamation is the publication of false statement, which exposes a person to ridicule, hatred or contempt in addition to causing untold damage to his office, trade or profession. In this instance, the plaintiff is not only disparaged but also avoided by right thinking members of the society.

Sections 373-381 of the Criminal Code⁷⁵ classify defamation as a crime in Nigeria, particularly when the publication threatens public peace and order. Thus, if someone makes defamatory statements at a press conference, they are liable as the author, while the press becomes liable for repeating the defamation. The same principle applies to defamatory content published online.⁷⁶ Ultimately, it is the role of the courts to safeguard citizens' fundamental rights against unwarranted attacks, except where the speech falls within constitutional exceptions.⁷⁷

⁷² Paras 3.1.1 & 3.1.2 *Nigeria Broadcasting Code* 2019.

⁷³ Offences relating to hate speech are classified as Class A. See para 15.2.1 NB Code. In 2020, an attempted amendment to the 6th Edition of the Code was criticised for punitively increasing the hate speech fine from N500,000 to N5,000,000.

⁷⁴ *Media Rights Agenda v. Nigerian Broadcasting Commission* FHC/ABJ/CS/1386/2021.

⁷⁵ The Criminal Code Act, Cap C38, LFN 2004.

⁷⁶ *Godfery v. Demon Interne Ltd* (1999)4 ALL ER 342; *Iloabachie v. Iloabachie* (2005) 13 NWLR (Pt. 943) 695.

⁷⁷ *Punch Nigeria Ltd & Anor v. Eyitene* (2012) LCN/5157(CA); *Guardian Newspaper Ltd v. Ajeh* (2005) 12 NWLR (Pt 938) 205 at 229.

Sedition in Nigeria refers to any spoken or written communication intended to incite disaffection, hatred, or contempt against the government, including speeches or publications that advocate hostility toward the State with the aim of provoking public disorder and breaching peace. Sections 50-52 of the Criminal Code and Sections 416-422 of the Penal Code⁷⁸ criminalise sedition, prescribing punishments ranging from imprisonment to fines and forfeiture of the seditious publication.⁷⁹ While these provisions are designed to protect public order, the offence of sedition has been criticised for its potential misuse in frustrating legitimate criticism of government policies, thereby posing a threat to the vigorous debates that are indispensable in democratic governance.

In *D.P.P v. Chike Obi*,⁸⁰ the accused was charged under section 51(2) of the Criminal Code for distributing a seditious publication that declared —*Down with the enemies of the people, the exploiters of the weak and oppressor of the people*—, directed against the Federal Government. The Court emphasised that while freedom of speech is a constitutional right, publications must remain within the bounds of the law, and reasonable precautions, justifiable in a democratic society are necessary to preserve public safety and order.

Hate Speech Bill(s) in Nigeria

Nigeria is bound by international human rights obligations arising from treaty commitments requiring the promotion of equality and the prohibition of unfair discrimination, hate speech and harassment.

Apart from the Cybercrimes Act, the government in its effort to regulate hate speech and the use of the social media to arbitrarily transmit false and malicious information presented two bills at the National Assembly; the National Commission for the Prohibition of Hate Speech Bill⁸¹ and the Protection from Internet Falsehood and Manipulation and other Related Offences Bill.⁸² The Hate Speech Bill proposes that persons who publish, distribute or directs the publication of materials which involves the use threatening, abusive or

⁷⁸ Penal Code Federal Provisions Act, Cap P3, LFN 2004.

⁷⁹ A Lester & G Bindman, *Race and Law in Great Britain*, Cambridge (Harvard University Press, 1972) 345.

⁸⁰ (1961) ALL NLR, 186.

⁸¹ Coined the ‘Hate Speech Bill’.

⁸² The Anti-social Media Bill was also introduced in 2019.

insulting words or behaviour commits an offence, if such person intends to stir up ethnic hatred, or putting into consideration existing circumstances, ethnic hatred is likely to be stirred up against any person or group of persons from an ethnic group in Nigeria. According to the bill, any person who commits this offence shall be liable to life imprisonment and where the act causes any loss of life, the person shall be punished with death by hanging.⁸³

The Bill penalises persons who unjustifiably discriminates against other persons on ethnic grounds. Also, people who deliberately utter words to incite feelings of contempt, hatred, hostility, violence or discrimination against other persons, group or community on the basis of ethnicity or race commit an offence and upon conviction, liable to imprisonment for a term not less than five years, or payment of fine of not less than N10 million, or both.⁸⁴

In addition, the Hate Speech Bill proposes the establishment of a National Commission for the Prohibition of Hate Speech, tasked with investigating and prosecuting reported offences. The Commission may dismiss frivolous, vexatious, or misconceived complaints, or those better suited for resolution in the Courts. Where a complaint is declined, the Commission must notify the complainant within forty-five days of submission.⁸⁵

The Anti-Social Media Bill seeks to criminalise the use of social media to spread false or malicious information; applying to deliberate acts by persons both within and outside Nigeria. It defines ‘prohibited statements of fact’ as false claims likely to harm national security, public health or safety, damage foreign relations, influence elections, incite hatred or ill-will, or erode public confidence in government functions. The Bill also outlaws the creation of fake accounts used to transmit such false statements.⁸⁶

Although the aim of introducing these bills is understandable, given the unchecked use of media, especially social media, to incite ethnic, religious, and regional hatred, and the need for a clearer legal framework to curb division, the proposals have faced persistent criticisms since 2019 from citizens, human rights organizations, opposition parties, and international rights groups.

⁸³ Sec 4 Hate Speech Bill.

⁸⁴ Secs 5 & 6 Hate Speech Bill.

⁸⁵ Secs 9, 37- 41 Hate Speech Bill.

⁸⁶ Sec 4 & 5 Anti-Social Media Bill.

Criticism of the Hate Speech and Anti-Social Media Bill

The Hate Speech and Anti-Social Media Bills have been severally criticised. One of such criticism is that the two bills are a mere duplication of existing legislations such as the Cyber Crimes Act and the Anti-Terrorism Act⁸⁷ already cover many of the offences the new bills seeks to address. Another criticism against the bills is that they can be used by the government as tools to gag the press, citizens and civil society organisations thereby restricting the freedom of expression. The Hate Speech Bill has been faulted for not clearly defining what qualifies as hate speech, leaving room for vague or overly broad interpretations. This gap risks misuse, as international law requires States to prohibit advocacy inciting discrimination, hostility, or violence, but only through restrictions that are precise and narrowly tailored. Article 19(3) of the ICCPR sets the grounds for limiting free expression, while the Rabat Plan of Action further insists such limitations must meet the test of necessity in a democratic society.⁸⁸

An ill-defined law against hate speech can be used against already marginalised groups to further exclude them from the political process. Conferment of a statement or publication with the of the ‘toga’ of hate speech, ought to be confined to extreme instances where the speech expressly incites physical violence, or the extermination of identified individuals or groups.⁸⁹ As Matsuda notes, overt and undoubted incidents of hatred against minority groups, instead of being dismissed as mere ‘pranks’, worthy of casual dismissal by government and law enforcement agents, should be subjected to public formal criminal sanctions; the appropriate response to hate and racist speech.⁹⁰

Other criticisms to the bills include the highly punitive sanctions, which ranges from the payment of heavy fines to life imprisonment and even the death penalty, where the hate speech instigates violence that leads to the death of a person. While criminalising hate

⁸⁷ Terrorism (Prevention and Prohibition) Act, 2022.

⁸⁸ S Bakare, *Nigeria: Bills on hate speech and social media are dangerous attacks on freedom of expression* (2019) <https://www.amnesty.org/en/latest/press-release/2019/12/nigeria-bills-on-hate-speech-and-social-media-are-dangerous-attacks-on-freedom-of-expression/> Accessed 2nd December 2025.

⁸⁹ M Herz & P Molnar, *The Content and Context of Hate Speech: Rethinking Regulation and Responses* (Cambridge University Press, 2012) 3.

⁹⁰ M J. Matsuda, ‘Public Response to Racist Speech: Considering the Victim's Story’ (1989) 87(8) *Michigan Law Review* 2321.

speech is necessary given Nigeria's multi-ethnic and multi-religious tensions, the proposed death penalty in the hate bill goes too far. Similarly, the heavy fines and imprisonment in the Anti-Social bill are seen as veiled attempts to suppress free speech, a cornerstone of democracy and public participation in governance.⁹¹

Apart from objections to its language, questions remain as to the effectiveness of the proposed hate bill. Comparative legal practice reveals no uniform position. While Germany and Canada legally prohibit certain forms of offensive and hateful expression, the challenge of inconsistent application and high evidentiary thresholds impede their effectiveness.⁹² even in the United States which treats laws against hate speech as unconstitutional; it is often difficult to draw a clear line between hate speech and categories such as ‘fighting words’, despite the latter’s limited exclusion from First Amendment protection.⁹³ The social media is one of the remaining places where Nigerians can express their opinions freely. However, the indiscriminate harassment of journalists and bloggers coupled with the passage of the Cyber Crimes Act into law, has already shrunk the civic space and created a climate of fear.⁹⁴

Hate Speech and Freedom of Expression: Commentary

Today, the influence of hate speech has expanded considerably. Its destructive effects, magnified by the advent and widespread use of social media, have become increasingly pervasive. The phenomenon which undermines social cohesion, is a fertile ground for breeding distrust and intolerance, thereby cultivating conditions that are conducive to conflict and tension. The rampant use of hate speech particularly online, has been condemned by many who rightly regard it as a menace that is antithetic to democratic values, social stability and peace.⁹⁵

⁹¹ Human Rights Watch, Nigeria: Renewed Crackdown on Freedom Of Expression, <https://www.hrw.org/reports/2003/nigeria1203/nigeria1203.pdf> accessed on 4th March 2026.

⁹² Policy Options, *New Hate-Crime Bill Must Confront The Enforcement Gap*, October 2025, <https://policyoptions.irpp.org/2025/10/hate-crimes-enforcement-gap/> accessed 20th January 2026.

⁹³ *Chaplinsky v. New Hampshire* (1942) 315 U.S. 565.

⁹⁴ Bakare, (n 92).

⁹⁵ L K. L. Tjon Soei Len & A de Ruijter, ‘Conceptualising the tortuous harms of sexist and racist hate speech’ (2023) 2 *European Law Open* 8-29.

According to Boromisza-Habashi, hate speech is a pervasive social problem manifested through the use of derogatory and dehumanizing expressions often directed at individuals or groups based on identity markers such as race, gender, sexual orientation, or religion. Often a recurrent precursor to systemic discrimination, violence, and even genocide,⁹⁶ the unchecked proliferation of hate speech not only undermine efforts to foster social cohesion and peace,⁹⁷ but also poses a grave threat to the realisation and protection of fundamental human rights and freedoms.

At the individual level, the unchecked use of hate speech severely disrupts the victims' life. Beyond eroding his self-confidence, it diminishes and destabilises his personal and social relationships, a consequence of the continual denial of self-worth. Infact, the harm occasioned by the consistent exposure to hate speech may even pass through generations *viz* from parents to children.⁹⁸ According to Matsuda, the harm occasioned as a result of racist and other forms of hate speech may be difficult to collectively analyse, given the specific contexts of each.⁹⁹

A significant obstacle to the statutory regulation of hate speech lies in the assertion in some quarters that such expressions are harmless and tolerating them is the price paid for living in a free society.¹⁰⁰ It is however felt that the adoption of this view is faulty given the untold harm and dangers subjects of hate speech are constantly exposed to. Because the freedom of speech constitutes a foundational principle of democratic societies, restrictions to it must be clearly defined, exceptional, and justified.¹⁰¹

⁹⁶ UN, Understanding Hate Speech: Hate Speech and Real Harm <https://www.un.org/en/hate-speech/understanding-hate-speech/hate-speech-and-real-harm> accessed 4th March 2026.

⁹⁷ D Boromisza-Habashi, *Speaking Hatefully: Culture, Communication, and Political Action in Hungary*, (2013) 6 Pennsylvania State University Press, www.jstor.org/stable/10.5325/j.ctt32bb7q accessed 4th March 2026.

⁹⁸ Ibid 146-147.

⁹⁹ M J Matsuda, 'Public Response to Racist Speech: Considering the Victim's Story' (1989) 87 *Michigan Law Review* 2320.

¹⁰⁰ R Delgado & J Stefancic, *Must We Defend Nazis? Why the First Amendment Should Not Protect Hate Speech and White Supremacy* (New York University Press, 2018).

¹⁰¹ Rabat Plan of Action (note 48).

Like Jagland rightly explains, there is no reason to confuse hate speech and free speech with each other.¹⁰² While enjoyment of the right to freedom of expression is paramount even when our words may offend, shock, or unsettle others; it is important not to cross acceptable boundaries of human behaviour. The moment a person knowingly incites violence, discrimination, or hostility against another; he has crossed the very thin line separating legitimate free expression from destructive hate speech.

In recent years, the duty to uphold the right to dignity for all irrespective of gender, ethnicity, or religion has become increasingly complex. This challenge is intensified by the speed at which hate speech proliferates through social media platforms.....with the mere click of a button; information is disseminated globally within seconds, thereby amplifying the spread of harmful rhetoric that undermine efforts to safeguard inclusivity and respect in today's world.

Despite the above, restrictions on hate speech must draw clear boundaries that protect free expression, privacy, and the right to criticise government, while equally shielding individuals from unwarranted state intrusion. Speech that threatens or incites hatred against others, however, deserves no constitutional protection, as it violates others' fundamental right to personal security and freedom from violence.¹⁰³

Conclusion

After all, said and done, The real question for Nigeria is not whether to regulate hate speech, but how to do so without worsening existing divisions. Evidence from other jurisdictions shows that hate speech laws don't automatically promote harmony, they can instead be weaponised by rival groups against each other. Nigeria must therefore move beyond the notion that legislation alone can fix problems deeply rooted in ethnic rivalry, political distrust, and weak national cohesion.

Nigeria's challenge lies not in the absence of legal controls, but in weak enforcement, institutional inconsistency, and a lack of a tailored framework for hate speech. Existing

¹⁰² Council of Europe, 'Hate speech is not free speech' 2016 <https://www.coe.int/en/web/portal/-/hate-speech-is-not-free-speech-says-secretary-general-ahead-of-human-rights-day#:~:text=Newsroom,hate%20speech%2C%E2%80%9D%20he%20said>. Accessed 26th February 2026.

¹⁰³ A Bernstein, 'Abuse and Harassment Diminish Free Speech' (2014) 35(1) *Pace Law Review* 1, 25–27.

laws on defamation and public order offer partial remedies but fall short of addressing hate speech's unique constitutional and social dimensions. What is needed is not more law, but better law; clear, proportionate, due process-compliant, and protective of democratic participation. Long-term solutions also require public legal education, equipping citizens to understand the boundaries of free expression, while fostering a culture of responsible speech that enables open debate without normalising divisive or threatening language.

Nigeria's response to hate speech must be grounded in a simple definition that separates genuinely harmful speech from offensive but legitimate expression, with proportionate sanctions that reflect context, intent, and impact, excluding the death penalty as excessive. The law must apply equally to all, including public officials who exploit divisions for political gain.

Beyond legislation, lasting solutions require stronger media standards, responsible digital content moderation, and a collective effort across government, civil society, and community institutions to build a culture where hate speech is neither rewarded nor excused.