

## **DELIMITING THE BOUNDARIES BETWEEN FREEDOM OF EXPRESSION AND HATE SPEECH: ROADMAP TO NATIONAL COHESION\***

### **Abstract**

*The right to freedom of expression is one of the fundamental rights recognised universally and internationally and protected by the Constitution of most countries of the world, including Nigeria.<sup>1</sup> It is crucial to note that the right has expressly been provided for in the Constitution of most countries because of its importance and relevance to liberty and democracy. Like other rights provided in the Constitution, the right to freedom of expression is not a blanket right. In other words, it has its limitations. For example, one cannot, acting under the right to freedom of expression, malign the character of another person or make defamatory remarks of the person. The law is crystallised that any person who feels that someone has defamed their character or malign their person has the right to go to court and claim damages against such person. Lately, the phenomenon of hate speech has become a recurring decimal in Nigeria. This phenomenon has notably brought to fore with recent developments in the polity with various regional groups clamouring geo-political interests in acerbic words. Such words and communications have inevitably helped to pull the fabrics that hold the nation to its seams. Using doctrinal research methodology, the authors herein consider the concepts of freedom of expression and hate speech, delimit the boundaries between the duo, x-ray the limitations of right to freedom of expression and examine the legal framework of freedom of expression and hate speech. The implications of hate speech on national cohesion also form part of the focal point of this paper. The paper gives recommendations on how hate speech can be curbed for the furtherance of national cohesion in Nigeria.*

**Keywords:** Fundamental Right, Freedom of Expression, Hate Speech, Free Speech, Nigeria

### **1. Introduction**

Freedom of expression, like other fundamental rights, is preserved and given protection both universally and under the Constitution of the Federal Republic of Nigeria, 1999, as amended.<sup>2</sup> It is important and most relevant because it promotes personal liberty and democracy, thereby affording people the opportunity to freely air out their opinions on a issues that affect them individually and collectively. Furthermore, people are also given the opportunity to practice democracy, by freely choosing the representatives who will lead them. Suffice it to say, that the right to freedom of expression is also given protection under the Universal Declaration of Human Rights<sup>3</sup> and other international and regional instruments on human rights, inclusive of the African Charter on Human and Peoples Rights.<sup>4</sup> There is need to properly delimit what speech should or may be prohibited on the basis that it incites others to hatred, also known as ‘hate speech’. This issue has become a matter of great dispute and argument nationally and internationally. Section 39(1) of the Constitution of the Federal Republic of Nigeria, 1999, as amended, provides that everyone has the right to freedom of expression, but the right is not absolute. Similarly, many countries have laws that censor or limit certain types of expression or speech that incites violence and hatred. Thus, when our right to speak our mind encroaches on someone’s freedom, then that freedom is expected not to stand unregulated in any nation that wishes to create a safe and respectful society to its members.<sup>5</sup> Some free speech advocates prefer an open marketplace of ideas, where no expression is restricted or limited. They consider that the best response to harmful speech is through debate that lets different ideas freely challenge it. Others argue that restrictions on

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<sup>1</sup>The right to Freedom of expression and other fundamental rights are contained in Chapter IV of the 1999 Constitution, as amended.

<sup>2</sup>See Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999, as amended.

<sup>3</sup>1948.

<sup>4</sup>1986.

<sup>5</sup>Mohammed, N., ‘Tackling Hate Speech in Nigeria’ (2019) <<https://www.blueprint.ng>> accessed on the 12<sup>th</sup> February, 2026.

hate speech are vital to the protection of minority communities from the harm that such speech causes.<sup>6</sup> Different approaches to what is acceptable speech can be seen around the world. Some countries show a greater acceptance than others for probably certain forms of speech and even the expression of certain opinions. For instance, United States of America has traditionally been a country where the constitutional protection of free speech is vigorously defended.<sup>7</sup>

The foregoing notwithstanding, even in the United States of America, there are restrictions to free speech, such as speech that incites against ‘imminent lawless action’ and those that censor obscenity. Even free speech advocates agree that hate speech requires special handling, especially when leveled against minorities too weak to counter it. It has real and devastating effect on people’s lives, health and safety. It is harmful and divisive for communities and hampers social progress in fighting discrimination. Hate speech can lead to war and genocide. Although the right to free speech is a fundamental right, it should not be allowed to outweigh the basic human rights of other people. When one makes a hate speech, especially a speech that touches on the right to freedom of expression, a cause of action will arise and the courts can be approached to ventilate grievances. Thus, the courts are saddled with the responsibility of establishing a balance between freedom of expression and some of these limitations, inclusive of the one that borders on the protection of a person against hate speech.<sup>8</sup>

## 2. Conceptual Clarifications

**The Right to Freedom of Expression:** In a broad sense, freedom of expression simply means the liberty of every person to openly discuss issues, hold opinions and impart ideas without restrictions, restraints or fear of punishment.<sup>9</sup> It is one of the fundamental rights enshrined in the Constitution of the Federal Republic of Nigeria, 1999, that allows individuals to hold opinions, receive, and share information and ideas without interference. Its scope is wide and it covers very many areas including verbal speech, writing, art, and online, visual, or audio communication. It is relevant to note that while this right is fundamental and most crucial to the practice of democracy, it is not an absolute right, as very many areas of the right are restricted and regulated.<sup>10</sup>

**Hate Speech:** Hate Speech does not have any single universally acceptable definition. This is so because characterisation of what constitutes hate speech is still rooted in controversy. Hate speech has been defined as speech that carries no meaning other than the expression of hatred for some group, such as a particular race, especially in circumstances in which communication is likely to provoke violence.<sup>11</sup> In a similar vein, the Committee of Ministers of the Council of Europe views hate speech as ‘covering all forms of expression that 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 people of immigrant origin. Hate speech is a speech that attacks, threatens, or insults a person or group on the basis of national origin, ethnicity, colour, religion, gender, sexual orientation or disability. It vilifies, harasses, intimidates, or incites hatred toward an individual or group on the basis of a characteristic such as race, ethnicity, religion, gender or sexual orientation. The word ‘speech’ here refers not only to verbal inscriptions and utterances, but also to pictorial representations and symbols.<sup>12</sup> It is also defined as any kind of communication in speech, writing or behaviour that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, or based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity

<sup>6</sup> Ibid.

<sup>7</sup> Ruane, K. A., ‘United States Congressional Research Service, Freedom of Speech and Press Exceptions to the First Amendment’ (2019) <<https://www.fas.org>> accessed on the 12<sup>th</sup> February, 2026.

<sup>8</sup> Ibid.

<sup>9</sup> Udofa J. Imo, ‘Right to Freedom of Expression and the Law of Defamation in Nigeria’, *International Journal of Advanced Legal Studies* (2011) (2) (1).

<sup>10</sup> Ibid.

<sup>11</sup> Garner, B A, *Black’s Law Dictionary* (9<sup>th</sup>edn Thomson West Publishing Co. 2004)

<sup>12</sup>(Brison, S, ‘The International Encyclopedia of Ethics’ (2013) <<https://www.researchgate.net>> accessed on the 4<sup>th</sup> February, 2026.

factor.<sup>13</sup> It puts people down based on their race or ethnic origin, religion, gender, age, physical condition, disability or sexual orientation. It has been described as devastating to liberty, disrespectful to autonomy, inability to self-realisation, stifling the discovery of truth, unnecessary and responsible for chilling forms of valuable speech.<sup>14</sup>

It is noteworthy to state that hate speech should not be tolerated under the guise of exercise of right to freedom of expression or the right to exercise of free speech. This is so because of the devastating and disastrous effects on people's lives and the risks it has on their health and safety.<sup>15</sup> Indisputably, the right to freedom of expression or speech should go further than curbing state power to censor speech to creating conditions of genuine equality. Although the technological invention which has introduced Facebook, WhatsApp, Tiktok, Instagram, etc. has, in recent times, helped Nigerians to freely express their opinions on issues that affect or impact their lives directly or indirectly, the use of it has also negatively impacted on the right to freedom of expression. Thus, delimiting the scope of the right to freedom of expression and hate speech has become very difficult and this is inimical to national peace and cohesion.

### 3. Limitations to Freedom of Expression

As explored and briefly established in the foregoing introduction, the right to freedom of expression is to be enjoyed within certain boundaries, otherwise a cause of action may arise. Section 39(3) of the Constitution of the Federal Republic of Nigeria, 1999, as amended provides:

Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society—

- (a) for the purpose of preventing the disclosure of information received in confidence,
- (b) for maintaining the authority and independence of the courts,
- or (c) for imposing restrictions upon government officers, members of the armed forces of the Federation or members of the Nigeria Police Force or other government security services or agencies established by law.

Furthermore, Section 45(1) of the Constitution states thus:

Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society—

- (a) in the interest of defence, public safety, public order, public morality or public health;
- or
- (b) for the purpose of protecting the rights and freedom of other persons.

From the foregoing, the following it can be distilled that the right to freedom of speech is limited in the following circumstances:

**Privileged/Confidential Information:** The Nigerian Constitution, under Section 39(3)(a), recognizes that freedom of expression is not absolute. It permits restrictions 'for the purpose of preventing the disclosure of information received in confidence.' This provision aims to balance the individual's right to speak freely with the state's interest in maintaining confidentiality in sensitive communications. This limitation is particularly relevant in professional, governmental, and national security contexts, where certain information is entrusted to individuals or institutions under the expectation of discretion. For example, doctors, lawyers, public servants, journalists, and security personnel often have access to sensitive or classified information. Disclosure of such information can cause harm—whether to individuals, institutions, or national interests. One key example is in the civil service and security agencies, where officers may have access to classified documents, diplomatic communications, or intelligence reports. Leaking such information could compromise national security, endanger lives, or

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<sup>13</sup>Guterres, A 'United Nations Strategy and Plan of Action on Hate Speech' (2019) <<https://www.un.org>> accessed on the 13<sup>th</sup> February, 2026.

<sup>14</sup> Brown, A, 'Hate Speech Law' (2015) <<https://www.aopen.net>> accessed on the 4<sup>th</sup> February, 2026.

<sup>15</sup> Arthur, J, 'The Limits of Free Speech' (2012) <<https://www.rewire.news/article/2011/09/21>> accessed on the 4<sup>th</sup> February, 2026.

disrupt public trust in state institutions. Thus, laws like the Official Secrets Act exist to criminalize the unauthorized disclosure of confidential government information, even if such a disclosure is done in the name of ‘freedom of expression.’ Similarly, professionals like lawyers and doctors are bound by codes of ethics to protect client or patient confidentiality. If these professionals publicly disclose private details of those they serve, they may face legal penalties or professional sanctions. Such confidentiality protections are essential to maintain trust in the legal and healthcare systems. In essence, the Constitution permits restrictions on free speech when such speech involves the breach of confidentiality, which is necessary to preserve trust, professional integrity, and the functioning of government.

**Protection of Court Authority and Judicial Integrity:** The Nigerian Constitution, under Section 39(3)(b), provides that freedom of expression may be restricted ‘for maintaining the authority and independence of the courts.’ This provision reflects the recognition that while individuals have the right to freely express their opinions, such expression must not undermine the judiciary, its processes, or its ability to function independently and impartially. The courts are the primary guardians of the rule of law in a constitutional democracy. Their decisions must be based on law and evidence—not influenced by public pressure, media campaigns, or disparaging remarks. Therefore, speech that amounts to scandalizing the court, intimidating judges, or pre-emptively undermining judicial decisions can be lawfully restricted. This is essential to ensure that judges can perform their duties without fear, favour, or interference. An example of this limitation in practice is seen in the offence of contempt of court, which could be contempt *ex facie curiae* or contempt *in facie curiae* (i.e., contempt committed outside the courtroom or contempt committed inside the courtroom). Publications or broadcasts that unjustly attack judges, question their integrity without evidence, or attempt to sway pending decisions can attract contempt charges. Contemptuous remarks made within the court can be met with a contempt charge on the spot. While fair criticism of judicial decisions is allowed in a democracy, malicious or reckless attacks that bring the court into disrepute are not protected under Section 39.

**Protection of National Security:** Another limitation to the guaranty under Section 39(1) of the 1999 Constitution (as amended), is found in Section 39(3)(c), which permits restrictions ‘upon government officers, members of the armed forces of the Federation or members of the Nigeria Police Force or other government security services or agencies established by law.’ This provision reflects the imperative to protect national security, public order, and institutional discipline within key arms of the state. The nature of the work carried out by public officers and security personnel involves access to sensitive, strategic, or classified information. To maintain operational confidentiality and institutional loyalty, these individuals are lawfully restricted from making certain public statements, engaging in political speech, or disclosing official matters. The Public Service Rules, Armed Forces Act, Police Act, and other regulatory instruments legally enforce such restrictions, in line with the constitutional allowance. Additionally, Section 45(1) of the Constitution provides further constitutional justification. This means that even where the restriction does not fall directly under Section 39(3)(c), it will still be valid under Section 45(1) if it is for the purpose of protecting national security.<sup>16</sup> In effect, while Nigerian citizens may enjoy robust expressive rights, members of the military, police, and security agencies are constitutionally bound by stricter codes of conduct. These limitations ensure that their public communication does not endanger state security or undermine the neutrality and discipline expected of them. However, such restrictions must still be reasonable, proportionate, and justifiable in a democratic society to prevent abuse.

**Protection of the Rights and Reputation of Others:** One of the most important limitations is provided in Section 45(1)(b), which restricts freedom expression ‘for the purpose of protecting the rights and freedom of other persons.’ This includes the right to dignity, privacy, and reputation, especially as it relates to defamation. Defamation refers to the publication of false statements that injure a person’s reputation. Under Nigerian law, defamation can be civil or criminal, and it serves as a critical check against the misuse of freedom of speech to cause harm. While individuals are free to express opinions,

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<sup>16</sup> Learn Nigerian Law, ‘Freedom of Expression and the Press’ <<https://www.learnnigerianlaw.com>> accessed on the 28<sup>th</sup> April, 2025.

they may not do so in ways that maliciously damage another person's character or expose them to public ridicule or hatred.

The Supreme Court has affirmed this limitation in several cases. In *Joseph Mangtup Din v African Newspapers of Nigeria Ltd.*<sup>17</sup>, the Supreme Court recognised that the right to freedom of expression does not extend to false statements that harm another's reputation. However, in the instant case, it was held that any piece of information which is true about the character, actions or inactions of the person it is said about shall not constitute defamation. In *Afe Babalola v Dele Farotimi*<sup>18</sup>, the renowned lawyer and Senior Advocate of Nigeria, who is also the founder of the of Afe Babalola University in Ado Ekiti, Aare Afe Babalola, SAN wrote a petition to the Commissioner of Police in Ekiti State against Dele Farotimi, Esq., on the ground that the latter defamed him in his book titled: *Nigeria and its Criminal Justice System*. Consequently, the Police arrested Dele and arraigned him before two courts, to wit: a Magistrate Court in Ekiti for criminal defamation and the Federal High Court, Ado Ekiti Judicial Division, for alleged Cyber-bullying. Although the cases were withdrawn, it nevertheless, sparked burning legal discourse on the topic of freedom of expression as it relates to its limitations. Dele, Esq., in several interviews with different media houses, has insisted that his book was not meant to malign the legal luminary; rather it is a critique of the systemic corruption within the Nigerian judiciary.<sup>19</sup> He further stated that he mentioned so many names and offices in the in the book and he simply told the truth as an author.

The Senior Advocate of Nigeria also filed a petition against Dele, Esq., before the Legal Practitioners Disciplinary Committee (LPDC). The Legal Practitioners Disciplinary Committee said that its mandate does not cover complaints about intellectual property, such as publications, but rather conduct or actions directly related to legal practice.<sup>20</sup> It further clarified that the publication is an intellectual property and not a conduct or action committed while practicing as a legal practitioner and urged all aggrieved parties who find the publication defamatory to ventilate their grievances through the regular courts.<sup>21</sup> Thus, while public discourse and criticism are permitted, defamatory remarks that go beyond fair comment and damage a person's integrity are actionable. The court upheld this view in this case of *Okedara v Attorney General of the Federation*.<sup>22</sup> This limitation balances free speech with the need to preserve personal dignity and protect individuals from reputational harm. It ensures that public communication is responsible, truthful, and respectful of others' rights. However, this restriction must also be applied reasonably and proportionately. Legitimate criticism, fair comment on matters of public interest, and honest opinion are protected defences against defamation. Thus, Section 45(1)(b) ensures that the exercise of free speech does not trample on the equally fundamental rights of others to live free from slander and public defamation.

**Public Morality and Public Health:** The Nigerian Constitution guarantees freedom of expression under Section 39(1). However, Section 45(1)(a) introduces an important limitation, allowing the government to enact laws that restrict this freedom when it is 'reasonably justifiable in a democratic society in the interest of... public morality or public health.' This provision ensures that personal expression does not endanger the moral fabric of society or threaten the health and safety of the public. Public morality refers to the shared ethical and cultural standards that a society considers essential for proper conduct. Expression that promotes obscenity, pornography, hate speech, or incitement to immoral behavior may be lawfully restricted. For instance, media content that glorifies sexual violence, promotes drug abuse, or undermines religious tolerance can be censored or penalized under laws designed to uphold public decency. Agencies like the Nigerian Broadcasting Commission (NBC) are

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<sup>17</sup> (1990) 3 NWLR (Pt. 139) 392 at 408-409.

<sup>18</sup> Akinselure, A. 'I Still Face Law Suits from Afe Babalola's Firm – Farotimi' *Punch News Papers* <<https://www.punchng.com>> accessed on the 28<sup>th</sup> April, 2025.

<sup>19</sup> *Ibid.*

<sup>20</sup> Lawyard, S. 'LPDC Rejects Afe Babalola's Petition Against Dele Farotimi' <<https://www.lawyard.org/news>> accessed on the 27<sup>th</sup> April, 2025.

<sup>21</sup> *Ibid.*

<sup>22</sup> (2019) LCN/12768 (CA).

empowered to regulate content for moral suitability, particularly to protect minors and vulnerable groups.

#### **4. Constitutional Guaranty of the Right to Freedom of Expression and the Dynamics of Hate Speech in Nigeria and Some Other Climes**

The right to freedom of expression is a fundamental right enshrined in the Constitution of the Federal Republic of Nigeria 1999 (as amended) and it has been so enshrined in the successive Nigerian constitutions ever since 1958.<sup>23</sup> Specifically, Section 39 provides:

1. Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.
2. Without prejudice to the generality of sub-section (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions provided that no person, other than the government of the federation or a state, or any other person or body authorized by the president on fulfillment of a condition laid down by the Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.

Indubitably, this right plays a crucial and critical role in the proper functioning of a democratic society, enabling individuals to freely express their thoughts, opinions, beliefs, and whatever else they wish to communicate without undue interference or censorship by the state, its actors, any individual or group. This section provides the constitutional guaranty to every citizen of the right, freedom, and liberty to express themselves through any and every form of communication. It also protects the right to access and disseminate information, which promotes transparency and accountability within the parlance of the government. This provision safeguards the independence of the press, while supporting the establishment of private media platforms, with the aim of attaining a transparent socio-political society.

It is important to note, however, that this right as guaranteed by the *grundnorm* of the country is not absolute. In Nigeria, individual rights are categorised into two types which are those that are relatively absolute and those that are qualified.<sup>24</sup> The right to freedom of speech falls into the latter categorisation as it is a right that is, to a certain extent, limited in its scope of exercisability. Section 39(3) of the Constitution allows for certain restrictions in the interest of national security, public safety, public order, public morality, or the rights and freedoms of other persons. For instance, laws on defamation, sedition, obscenity, and incitement to violence may limit this right, if such expression threatens societal harmony or individual reputation.

Over the years, the Nigerian judiciary has played a critical role in interpreting and enforcing this constitutional right. In the case of *Director of State Security Services v Olisa Agbakoba*,<sup>25</sup> the appellant, who is a Nigerian Legal Practitioner, was the president of a non-governmental human rights body based in Nigeria called the Civil Liberties Organization (C.L.O). He claimed relief under the Constitution of the Federal Republic of Nigeria, 1979, asserting that there was a breach, in several respects, of his fundamental rights, particularly, to personal liberty, freedom thought, freedom of expression and freedom of movement guaranteed respectively under section 32, 35, 36 and 38 of the Constitution. The incident that led to the appellant's application, in brief, is that sometime in March, 1992, the appellant was invited by a body in the Netherlands to participate in a human rights conference to take place in The Hague, the Netherlands from 22<sup>nd</sup> to 25<sup>th</sup> April, 1992. On April 21, 1992, he proceeded to the Murtala Mohammed International Airport with the view to travelling to The Hague. At the Airport, an officer of the Nigerian Security Services impounded his passport without giving any reasons why he did so. The officer now directed that the appellant was thus precluded from embarking on his journey to The Hague. Between April 22, 1992 and April 29, 1992, by personal visits to the office of the organisation and letters and please to the Attorney-General of the Federation, the appellant made several

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<sup>23</sup> Okonkwo, C., 'The Legal Basis of Freedom of Expression in Nigeria' *California Western International Law Journal* (1978) (8) (2) 7.

<sup>24</sup> Ibid.

<sup>25</sup> (1999) LLJR – SC.

efforts to have his passports released to him, but to no avail. On the 16<sup>th</sup> July, 1992, he swore to an affidavit deposing to these facts which had not been controverted and filed his application on the same day. When the application came up for hearing, the Court dismissed it and stated that the passport remains the property of the Government of the Federal Republic of Nigeria and may be withdrawn at any time. The appellant then appealed to the Court of Appeal and the decision of the lower Court was set aside.

Aggrieved with the decision, the appellants appealed the Supreme Court of Nigeria. The apex Court held, amongst others, that the decision of the Court below that the right to travel abroad cannot be effectively exercised without the Nigerian passport, connotes logically and legally, that an unjustified denial of the right to hold a passport, is a denial of the right to travel abroad. The Court stated that impounding the respondent's passport constitutes infringement on his rights because, by so doing, he cannot leave the country. The Court stated that arbitrary discretion of government in respect of issuance, or withdrawal of passport as the appellants contend, is contrary to the principles of our Constitution and the rule of law, since any withdrawal of the passport of a citizen must have to be justified. Thus, the apex Court reaffirmed the importance of freedom of expression as an indispensable element of democracy. Similarly, in *Arthur Nwankwo v The State*,<sup>26</sup> the Court of Appeal emphasised the need for public office holders to be tolerant of criticism, noting that the right to criticize the government is a hallmark of democratic governance.

In contradistinction, the United States of America, in its Constitution, protected the expression of ideas through the spoken and written word, artistic media, and expressive action against government control. It provides:

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.

Like many other rights protected by the American Constitution, it is important to differentiate between regulation by the government, in the form of laws, administrative rulings and court actions, and private regulation, such as rules imposed by private companies on their employees or internet service providers on their subscribers. The First Amendment addresses only the first category, mandating that the government does not abridge the free speech rights of the citizens in the United States; thus, it does not reach the actions of private entities. Hate speech, when it is the expression of an idea and not targeted to a specific individual, it is protected by the Constitution of the United States of America.

The Constitution of the United States of America protects the right to freedom of Speech of the individual. This is in contrast to hate speech in Nigeria, which is sought to be regulated by government. In the United States, speech that is commonly referred to as 'hate speech' is protected by the First Amendment, while speech posing a 'clear and present danger' is not. The difficulty arises at determining at what point the protected speech of general advocacy of hatred and violence crosses the line to the unprotected speech of incitement to specific is legal act. The policy of protecting speech, however offensive, as a fundamental right, is a strong one in the United States. European countries, which do not have the same constitutional traditions as the United States, are taking a more restrictive approach to hate speech. For example, in Germany it is illegal to incite racism or hatred in any medium, including in the Internet. European governments are also seeking the cooperation of Internet Service Providers in shutting down websites that communicate hate.

In Nigeria, Section 24(1) of the Cybercrime (Prevention, Prohibition Etc) Act 2015 provides that any person who knowingly or intentionally sends a message or other matter by means of computer systems or network that:

- a) is grossly offensive, pornographic or of an indecent, obscene or menacing character or causes any such message or matter to be so sent or
- b) he knows to be false, for the purpose of causing annoyance, inconvenience, danger,

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<sup>26</sup> (1983) 6 NCLR 228.

obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will or needless anxiety to another or causes such a message to be sent commits an offence under this Act and shall be liable on conviction to a fine of not more than N7, 000,000.00 or imprisonment for a term of not more than 3 years or to both such fine and imprisonment.

Section 24 (2) of Cyber Crime Prevention Act provides thus, ‘Any person who knowingly or intentionally transmits or causes the transmission of any communication through a computer system or network ... commits an offence under this Act and shall be liable on conviction. The Electoral Act provides that no political campaign or slogan shall be tainted with abusive language directly or indirectly likely to injure religious, ethnic, tribal or sectional feelings. The above provision is the extant law on hate speech in Nigeria. However, this is not comprehensive and elaborate. Hate speech has been a great challenge in Nigeria. A hate speech bill was proposed at the 8<sup>th</sup> Senate in 2019. The proposed bill in Nigeria prescribed death penalty by hanging for any person found guilty of any form of hate speech that results in the death of another person. The Bill seeks to eliminate hate speech and discourage harassment on the grounds of ethnicity, religion or race among others. It prescribes stiff penalties for offences such as ‘ethnic hatred’. Any person who uses, publishes, presents, produces, plays, provides, distributes and/or directs the performance of any material, written and/or visual, which is threatening abusive or insulting or involves the use of threatening, abusive or insulting words, commits an offence. The Bill seeks the establishment of an Independent National Commission for Hate Speeches. The Bill proposes that:

any person who uses, publishes, presented, produces, plays, provides, distributes and or directs the performance of any material, written and or visual which is threatening, abusive or insulting words or behavior commits any offence if such person intends thereby to stir up ethnic hatred, or having regard to all the circumstances, ethnic hatred is likely to be stirred up against any person or person from such 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.<sup>27</sup> The proposed Commission would enforce hate speech laws across the country and ensure the elimination of hate speech. The recent spate of incidents in Nigeria involving both verbal and nonverbal expression of hatred has left many in the country feeling attacked, divided and unsafe. Hate speech has contributed to increased tension in Nigeria along religious and ethnic divides.<sup>28</sup> A major challenge in the proposed bill is that it is open to abuse. The question of who defines and determines what constitutes hate speech arises. Another concern of whether the regulation of hate speech should be tenable in a democratic setting. In a democracy, citizens ought to have avenues open to them to express legitimate interests and concerns about laws and ills going on in the society. It is this that hate speech laws or any law restricting the right to freedom of expression might inhibit, which in turn inhibits political participation.

## **5. Hate Speech and the Influence Social Media**

A mounting number of attacks on immigrants and other minorities have raised new concerns about the connection between inflammatory speech online and violent acts. Rumors and invectives disseminated online have contributed to violence ranging from lynching to ethnic extremism. The world now communicates on social media, with nearly a third of the world’s population active on Facebook alone.<sup>29</sup> As more and more people have moved online, experts say, individuals inclined toward racism, misogyny, or homophobia have found niches that can reinforce their views and goad them to violence. Social media platforms like, Facebook, YouTube, Instagram, Snap, Twitter and Skype also offer

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<sup>27</sup>Iroanusi, Q. ‘Important Things to Note about Nigeria’s Hate Speech Bill’ (2020) <<https://www.premiumtimesng.com>> accessed on the 13<sup>th</sup> January, 2026.

<sup>28</sup>Adibe, J. ‘Should the Law be used to Curb Hate Speech in Nigeria?’ (2018) <<https://www.brookings.org>> accessed on the 15<sup>th</sup> March, 2026.

<sup>29</sup>Myers, J. ‘Nearly a Third of the Globe is now on Facebook (2019) <<https://www.weforum.org>> accessed on the 15<sup>th</sup> March, 2026.

violent actors the opportunity to publicize their acts.<sup>30</sup>

It is on record that social media is ripe with hate speeches. In Nigeria today, despite the benefits that came with social media, experiences have shown that it also promoting disunity, igniting crisis and triggers hatred among members of the society.<sup>31</sup> Countering hate speech begins by a realisation that while freedom of expression is a fundamental right, the emergency of social media has created multiple platforms for the production, packaging and dissemination of hate speeches. The advent of social media has amplified citizen journalism; everyone has become a reporter. The social media has established an ideal platform to adapt and spread hate speech speedily because of its decentralised, anonymous and interactive structure. With the creation of social media, the essence of journalism is eroded. This is because apart from undermining the ethics of journalism profession, hate speech is a major factor in causing disaffection among tribes, religions and political class in Nigeria. The activities of Nigerians on social media are now being monitored for hate speech, anti-government and anti-security information by the military.<sup>32</sup> However, it becomes worrisome when the military decides to respond to anti-government commentaries. Many anti-government commentaries, especially by opposition parties in democracies, are not security threats nor does it constitute hate speech. In fact, they sweeten democracy. On the other hand, there is a legitimate fear that cracking down on hate speeches could be used as a ploy to clamp down on critics of government. It is pertinent to note that social media networks such as Facebook, Twitter, WhatsApp and some online news websites are where disparaging posts, fake news and distorted news are shared and published.

These social media platforms being known for their relative anonymity and wildfire reach are used by hate groups to spread misinformation easily and disguising such as if they were generated from legitimate sources. Some unscrupulous users of the social media platforms manipulate known search engines to make their hate propaganda more accessible to a variety of audiences or receivers. Some have cloned websites to spread hate speeches.<sup>33</sup> It has also been observed that, hateful content online diffuse faster, wider and faster than those of non-hateful users.

## **6. The Role of Hate Speech in the Promotion of Religious Intolerance in Nigeria**

Nigeria with over 250 million inhabitants and 250 ethnic groups is a very diverse country in terms of ethnic orientations, cultural practices and religious beliefs. In other words, Nigeria is a heterogeneous country, with diverse peoples and cultures.<sup>34</sup> This ordinarily should be a source of strength and unity. However, we have not found a way to co-exist peacefully, despite having lived together for several decades. Tribalism reigns in Nigerian and it plays a great part in the country's current quagmire. The country is polarised along ethnic, regional and religions lines and editors, reporters and owner of the news media belong to the various sides of the divide. These differences have been a major source of tension right from colonial era under British rule. However, its current manifestation is rapidly dividing the country into pockets of religious and ethnic cleavages.<sup>35</sup> One of the most popular online forums in Nigeria is Naira land, described by Forbes as the largest discussion forum in Africa.<sup>36</sup> This is a site where all Nigerian ethnic groups are represented. Discussions on the site, often easily degenerates into ethnic-religious hate speech, characterised by threats and call for violet actions. Interactions on this

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<sup>30</sup> Ibid.

<sup>31</sup> Laub, Z 'Hate Speech on Social Media: Global Comparison' (2019) <[https:// www.cfr.org](https://www.cfr.org)> accessed on the 12<sup>th</sup> March, 2026.

<sup>32</sup> Nwankwo, E. 'Is the Military Monitoring Social Media for the Wrong Reason?' (2017) <<https://www.thecable.org> > accessed on the 12<sup>th</sup> March, 2026.

<sup>33</sup> Paquette, D. 'Nigeria's Fakenews Bill Could Jail People for Lying on Social Media' <<https://www.washingtonpost.com>> accessed on the 10<sup>th</sup> March, 2026.

<sup>34</sup> Okoh, L., 'A Guide to the Indigenous People of Nigeria' (2019) <<https://www.washingtonpost.com>> accessed on the 8<sup>th</sup> March, 2026.

<sup>35</sup> Ibid.

<sup>36</sup> Osewa, O, 'Nairaland Largest Forum in Africa' <<https://www.nairaland.com>> accessed on the 6<sup>th</sup> February, 2026.

platform provide a mind-blowing view of tensions that pervades ethnic and religious relationships across different sections of the country. Religious extremists are also known to be behind a host of kidnapping including the nationals of other countries. The terrorists have also in times past made videos of their activities and uploaded same to the Internet. Thus, their goal of destabilizing Nigeria is an expression of ethnic and religious intolerance that largely pervade social interaction in Nigeria. Ethno-religion and hate speech are so pervasive in Nigeria and, sometimes, it is very difficult to identify or classify them.

## 7. Conclusion

Hate speech exists both in Nigeria and other jurisdictions. On the other hand, freedom of expression is one of the basic fundamental human rights in the constitution of most nation states. Freedom of expression is widely accepted as being necessary in a democracy as it facilitates the exchange of diverse opinions. Democracy guarantees and protects civil and political rights. Freedom of expression is essential for vibrant, robust and rigorous debate, disagreement and contention. The right to free speech is not unlimited, while few consider this freedom to be absolute, most would require compelling reason before considering the abridgement of freedom of expression to be justified. From the foregoing, hate speech depicts any utterance whether verbal or virtual which can endanger public safety, unity and national security. Anything short of this deserves to be curtailed so as not to lead to anarchy and violence. It is pertinent to note that for speech to qualify as hate speech, it must have occurred in the public.<sup>37</sup> With the expansion of the internet and the social media, new regulatory challenges more frequently arise because of the global reach of hate speech once transmitted.<sup>38</sup> The recent attack on some innocent citizens in Plateau State Nigeria has generated a lot of hues and cries from different quarters, especially on the social media. This has, undoubtedly deepened hatred and religious intolerance between Islam and Christianity, both of which are dominant religions in Nigeria. The hate speech that has trended on the social media as result of this incident is, no doubt, a microcosm of the reality faced in Nigeria. From the foregoing it is pertinent that limitations should and must be placed on hate speech in Nigeria. However, caution must be exercised to ensure that the rights of citizens to express themselves are not suppressed.

Conclusively, as new channels for hate speech are reaching wider audiences, than ever before and at lightning speed both the government, educational institutions, technological companies, international community, academia; need to step up their responses. A holistic approach that aims at tackling the whole life cycle of hate speech, from its roots causes to its impact on societies, should be adopted by all stakeholders. The following recommendations are pertinent. A new law that defines hate should be enacted in Nigeria and the same should clearly delimit the boundaries or scope between the right to freedom of expression and speech and hate speech. There should be education on media ethics, with clear mandate and focus on the rights and freedom of journalists and their role in creating and promoting peaceful co-existence of all the ethnic groups in Nigeria. There should be conflict sensitive reporting and multicultural awareness campaigns, with emphasis on knowledge about, and respect for the heterogeneity of the Nigerian cultures and traditions. All the offences that relate to hate speech should be thoroughly investigated by the key institutions and properly prosecuted to serve as deterrent to those who may want involve themselves in such acts.

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<sup>37</sup>Mrabure, O., 'Counteracting Hate Speech and the Right to Freedom of Expression' *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* (2016) p 17.

<sup>38</sup> Guiro & Park, E, 'Hate Speech on Social Media' *Philosophia* (2017) (45) (3) 957-971.