

**BETWEEN FREEDOM OF SPEECH AND HATE SPEECH:
FINDING THE BALANCE IN NIGERIA**

SUBMITTED

BY

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DECLARATION

I hereby declare that this project entitled “Between Freedom of Speech and Hate Speech: Finding the Balance in Nigeria” is my original work and that no part of this work has been presented in any previous application for a degree or diploma at this or any other institution. All sources used in the preparation of this project have been duly acknowledged.

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CERTIFICATION

This is to certify that the research project titled “Between Freedom of Speech and Hate Speech: Finding the Balance in Nigeria”, submitted by Abiodun David Judah (Registration No. 2020/LW/12548), has been supervised and approved by me/us as meeting the requirements for submission.

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DEDICATION

Dedicated to my family, friends and my brand.

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I thank God for His guidance. I am grateful to Mr. and Mrs. Abiodun (Dad and Mum) and the entire Abiodun family for their love and support.

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LIST OF ABBREVIATIONS

- ICERD — International Convention on the Elimination of All Forms of Racial Discrimination
- ICCPR — International Covenant on Civil and Political Rights
- UDHR — Universal Declaration of Human Rights
- NBC — Nigerian Broadcasting Commission .
- NHRC — National Human Rights Commission
- NPC — Nigerian Press Council
- PEPUDA — Promotion of Equality and Prevention of Unfair Discrimination Act (S.A.)
- DSA — Digital Services Act
- GDPR — General Data Protection Regulation.
- FRN — Federal Republic of Nigeria (abbrev. used in cases/discussion)
- INEC — Independent National Electoral Commission

ABSTRACT

This research examines the complex relationship between freedom of expression and hate speech regulation in contemporary democratic societies. Freedom of expression, a cornerstone of democratic discourse and individual autonomy, allows individuals to express their thoughts, opinions, and ideas without government restriction or censorship. However, it is not absolute and may be limited in certain circumstances, such as to protect national security, public order, or the rights of others. Hate speech, on the other hand, refers to expressions that incite hatred, discrimination, or violence against individuals or groups based on attributes such as race, religion, ethnicity, gender, or sexual orientation, posing challenges to social harmony and individual dignity. The study analyzes international legal frameworks, comparative jurisdictional approaches, and specific challenges in defining and regulating hate speech while preserving fundamental freedoms. International legal frameworks, such as the United Nations treaties and declarations, including the Universal Declaration of Human Rights (Article 19 and 20) and the International Covenant on Civil and Political Rights (Article 19 and 20), provide guidance on the balance between freedom of expression and the protection of human rights. Comparative jurisdictional approaches, including legal frameworks and case law from various countries, such as the United States (First Amendment), European Court of Human Rights (European Convention on Human Rights, Article 10), and Canada (Canadian Charter of Rights and Freedoms, Section 2(b) and Section 1), offer different models for regulating hate speech while protecting freedom of expression. Through doctrinal and comparative analysis, the research identifies key principles for achieving an appropriate balance between these competing interests. The findings suggest that while freedom of expression remains fundamental to democratic society, carefully crafted hate speech regulations can protect vulnerable groups without unduly restricting legitimate speech. The study concludes with recommendations for legal reform and policy implementation to effectively regulate hate speech while maintaining the essential freedom and democratic principle that forms the bedrock upon which a just and open society is built so it is imperative to preserve all these legal boundaries in our democracy

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

The tension between freedom of expression and the regulation of hate speech represents one of the most challenging balancing acts in contemporary legal systems. This fundamental tension emerges from two competing principles: the vital importance of free expression in democratic societies and the compelling interest in protecting human dignity and social cohesion from the harms of hateful speech.¹ As societies become increasingly diverse and digitally connected, this balance has grown more complex and consequential, requiring careful legal calibration across different cultural, political, and technological contexts.

Freedom of expression has long been recognized as a cornerstone of democratic governance and human flourishing. As articulated in Article 19 of the Universal Declaration of Human Rights, this freedom encompasses "However, this fundamental freedom has never been absolute. Even the most speech-protective legal systems recognize certain limited categories of expression that may be regulated due to their harm"². Among these, hate speech has emerged as a particularly contested category, one that various legal systems have approached with notably different frameworks and philosophies. Hate speech generally refers to expression that vilifies, intimidates, or incites hatred against persons or groups based on attributes such as race, ethnicity, gender, religion, sexual orientation, or disability. The harms attributed to such speech range from psychological injury to affected individuals, to damage to their equal standing in society, to the fomenting of discrimination and violence against vulnerable groups.

The historical context for hate speech regulation varies significantly across jurisdictions. In post-World War II Europe, particularly Germany, the experience of the Holocaust led to more restrictive approaches to hate speech, reflecting the understanding that unchecked vilification played a role in enabling atrocities. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted in 1965, explicitly requires state parties to criminalize the dissemination of ideas based on racial superiority or

¹ Waldron J, *The Harm in Hate Speech* (Harvard University Press 2012) 5.

² Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217A(III), art 19.

hatred and incitement to racial discrimination.³ By contrast, the United States has developed a more speech-protective jurisprudence, requiring that restrictions on hate speech meet the high threshold of constituting incitement to imminent lawless action.⁴

The advent of the digital age has dramatically transformed the landscape in which this legal balancing occurs. Social media platforms and online communication have created unprecedented opportunities for expression while simultaneously amplifying the potential reach and impact of harmful speech. The borderless nature of the internet creates jurisdictional complexities, as content posted in one legal context can be accessed in jurisdictions with very different approaches to regulating hate speech. The speed and viral nature of online communication can allow hateful content to spread faster than traditional regulatory mechanisms can respond, while algorithmic amplification may inadvertently promote divisive or inflammatory content.

Different legal traditions have developed distinct approaches to this balance. The European model generally permits more extensive restrictions on hate speech, as exemplified by the European Convention on Human Rights, which allows limitations on expression for the protection of the reputation or rights of others.⁵ The German Criminal Code specifically prohibits incitement to hatred against segments of the population, while France's press laws criminalize public insults based on race or religion. By contrast, the American approach, anchored in First Amendment jurisprudence, generally protects hate speech unless it rises to the level of incitement to imminent violence or constitutes a "true threat."⁶

International human rights law offers a framework that attempts to navigate this tension. The International Covenant on Civil and Political Rights (ICCPR) protects freedom of expression while requiring states to prohibit "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence."⁷ The Rabat Plan of Action, developed by the United Nations in 2012, proposes a six-part threshold test for defining

³ International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195, art 4.

⁴ *Brandenburg v Ohio* 395 US 444 (1969).

⁵ European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 221, art 10(2).

⁶ *Virginia v Black* 538 US 343 (2003).

⁷ *Virginia v Black* 538 US 343 (2003).

criminally punishable incitement, considering context, speaker, intent, content, extent, and likelihood of harm.⁸

The challenge of regulating hate speech while protecting free expression is further complicated by definitional ambiguities. What constitutes "hate" can be subjective and contextual, raising concerns about potential overreach or selective enforcement. Cultural and historical differences influence perceptions of what speech is harmful enough to warrant restriction, while linguistic nuances can make consistent application difficult. Some scholars and advocates worry that hate speech laws may be misused to silence legitimate dissent or criticism, particularly of governments or powerful institutions.

Emerging technologies continue to reshape this landscape. Artificial intelligence has created new capabilities for detecting potentially hateful content at scale, but also raises concerns about algorithmic bias and the lack of contextual understanding. Virtual reality and augmented reality platforms are creating new spaces for interaction where the impact of hateful expression may take novel forms. These technological developments outpace legal frameworks, creating regulatory gaps that can be exploited.

The proliferation of disinformation and "fake news" has introduced additional complexities. When false information is deliberately deployed to incite hatred against particular groups, the line between protection of free expression and prevention of harm becomes increasingly difficult to draw. Some jurisdictions have introduced or expanded laws addressing not just hateful content but false information that targets vulnerable groups, raising new questions about the proper limits of government regulation of speech.

The comparative study of hate speech regulation across different legal systems reveals that there is no universal solution to this tension. Each approach reflects particular historical experiences, cultural values, and constitutional traditions. What works in one context may be inappropriate or ineffective in another. Nevertheless, the increasing global nature of communication creates pressure for some degree of harmonization or at least mutual understanding across different regulatory regimes.

⁸ UN Office of the High Commissioner for Human Rights, *Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence* (2012) A/HRC/22/17/Add.4.

As societies continue to grapple with these complex issues, the search for an appropriate balance must be informed by multiple considerations: the foundational importance of free expression, the demonstrable harms of hate speech, the practical challenges of enforcement, the risk of overreach, and the evolving technological context. This research seeks to contribute to this ongoing navigation by examining how different legal systems have attempted to strike this balance, the successes and failures of various approaches, and the principles that might guide future regulatory efforts in this critical area.

1.2 Statement of the Problem

The fundamental challenge lies in reconciling two seemingly contradictory imperatives: protecting freedom of expression as a fundamental human right while preventing the harm caused by hate speech. This tension is exacerbated by several factors:

1. The inherent difficulty in defining hate speech with sufficient precision to avoid arbitrary enforcement while capturing genuinely harmful expression in Nigeria.
2. The risk that overly broad hate speech laws may be used to suppress legitimate political dissent or minority viewpoints that can be applicable in Nigeria
3. The challenge of applying traditional legal frameworks to rapidly evolving forms of online communication in Nigeria.
4. Proposing recommendations for legal Reform that protect both freedom of expression and vulnerable groups in Nigeria.

1.3 Aim and Objectives

The primary aim of this research is to develop a framework for balancing freedom of expression with effective hate speech regulation. Specific objectives include:

1. Examining existing legal frameworks governing hate speech and freedom of expression at international and national levels.
2. Analyzing comparative approaches across different jurisdictions to identify best practices.
3. Evaluating the effectiveness of current regulatory mechanisms in addressing modern forms of hate speech.

4. Proposing recommendations for legal reform that protect both freedom of expression and vulnerable groups.

1.4 Scope and Limitations of the Study:

This study focuses primarily on the legal aspects of hate speech regulation, with particular emphasis on Nigerian law and comparative analysis of selected jurisdictions. While acknowledging the broader social and political dimensions of the issue, the research concentrates on legal frameworks and their implementation. The scope of the study includes an examination of international legal frameworks, Nigerian laws and regulations, and comparative analysis of hate speech laws in other jurisdictions.

However, this study has several limitations. Firstly, the research is limited to a legal analysis, and does not extensively explore the social and political contexts of hate speech. Additionally, the study focuses on selected jurisdictions, and the findings may not be generalizable to all countries or regions. Furthermore, the rapidly evolving nature of hate speech and technology may render some aspects of the research outdated. The study also relies on existing literature and legal frameworks, and does not include collection of data for empirical research. These limitations notwithstanding, the study aims to contribute to the understanding of hate speech regulation and provide insights for policymakers and legal practitioners.

1.5 Significance of the Study

This research contributes to the ongoing dialogue about balancing fundamental rights in the digital age. Its findings will be particularly relevant for:

1. Legislators and policymakers developing hate speech regulations in Nigeria
2. Courts interpreting and applying hate speech laws in Nigeria
3. Human rights advocates working to protect both freedom of expression and vulnerable groups in Nigeria
4. Media practitioners navigating the boundaries of permissible speech in Nigeria

1.6 Research Methodology

This study employs a doctrinal methodology to comprehensively examine the complex issue of hate speech regulation. The research combines doctrinal analysis of primary legal sources,

including statutes, case law, and international treaties, to provide a thorough understanding of the legal frameworks governing hate speech. Additionally, comparative analysis of different jurisdictional approaches is conducted to identify best practices and lessons learned from various countries and regions.

The study also utilizes case study analysis of significant judicial decisions to illustrate the practical application of hate speech laws and regulations. Furthermore, a review of secondary literature, including academic articles, books, and policy documents, is conducted to provide context and insights into the social and political dimensions of hate speech. The sources of data relied on in this study include primary legal sources, such as Nigerian statutes and case law, international treaties and conventions, and laws and regulations from selected jurisdictions. Secondary sources include academic literature, policy documents, and reports from reputable organizations.

By employing a doctrinal methodology, this study aims to provide a nuanced and comprehensive understanding of hate speech regulation, and to identify effective strategies for balancing freedom of expression with the need to protect vulnerable groups from harm. The sources of data relied on in this study are diverse and reputable, ensuring the accuracy and reliability of the research findings

1.7 Chapter Analysis

The subsequent chapters of this research are structured to provide a comprehensive exploration of the complex relationship between freedom of expression and hate speech regulation. Chapter One serves as the introduction and research framework, setting the stage for the entire study by outlining the research questions, objectives, and scope. Chapter Two delves into conceptual clarifications and theoretical foundations, providing a deeper understanding of the key concepts and theoretical underpinnings that guide the research.

Chapter Three examines the legal and institutional framework analysis, focusing on the laws, regulations, and institutions that govern hate speech and freedom of expression. This chapter provides an in-depth analysis of the legal landscape and identifies gaps and challenges in the existing frameworks. Chapter Four investigates the legal challenges in balancing hate speech and freedom of expression in Nigeria, highlighting specific issues and concerns that arise in the Nigerian context.

Finally, Chapter Five presents the conclusions and recommendations of the research, synthesizing the findings and insights from the previous chapters to propose solutions for achieving an appropriate balance between freedom of expression and hate speech regulation. This final chapter aims to provide actionable recommendations for policymakers, legal practitioners, and other stakeholders.

CHAPTER TWO

CONCEPTUAL CLARIFICATIONS, THEORETICAL FOUNDATIONS, AND LITERATURE REVIEW

2.1 Conceptual Clarifications

2.1.1 Definitions of Freedom of Expression and Its Legal Limitations

Freedom of expression constitutes one of the fundamental pillars of democratic societies, serving as a cornerstone for personal autonomy, democratic governance, and societal progress. This cherished right has evolved significantly throughout Nigerian jurisprudential history, transforming from a mere aspiration during colonial times to a constitutionally protected right in contemporary Nigeria. Despite its paramount importance, this right is neither absolute nor unqualified, as its exercise must be balanced against other competing rights and societal interests.

At its core, freedom of expression encompasses the liberty to articulate opinions, ideas, and information without undue interference or censorship. According to Okonkwo, freedom of expression represents "the unfettered ability to voice one's thoughts, opinions, and beliefs through various mediums, constrained only by reasonable limitations necessary in a democratic society."⁹ This definition emphasizes both the breadth of the concept and acknowledges its inherent limitations. The Nigerian Constitution, under Section 39(1), frames this right as follows: "Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference."¹⁰ This constitutional provision adopts a comprehensive approach, protecting not only the right to disseminate ideas but also the right to receive information—both essential components of meaningful expressive freedom.

International instruments have similarly offered robust definitions of this right. The Universal Declaration of Human Rights (UDHR) articulates in Article 19 that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and

⁹O. Okonkwo, *Constitutional Law in Nigeria* (Spectrum Books, 2003) 245.

¹⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 39(1).

regardless of frontiers."¹¹ The International Covenant on Civil and Political Rights (ICCPR), to which Nigeria is a signatory, reaffirms this definition in its Article 19, adding further specificity to the scope and nature of the right.¹² The African Charter on Human and Peoples' Rights, domesticated in Nigeria through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, similarly recognizes this right in Article 9, stating that "every individual shall have the right to express and disseminate his opinions within the law."¹³

Nigerian courts have consistently interpreted freedom of expression broadly, acknowledging its multifaceted dimensions. In the landmark case of *Fawehinmi v. Akilu*,¹⁴ the Supreme Court emphasized that freedom of expression "encompasses not only verbal or written expressions but extends to artistic, symbolic, and other forms of expressive conduct." However, despite its fundamental nature, freedom of expression is subject to certain limitations that are deemed necessary within a democratic society. The Nigerian Constitution explicitly recognizes these limitations in Section 39(3), which permits restrictions "for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films."¹⁵ Additionally, Section 45(1) allows for laws that are "reasonably justifiable in a democratic society" in the interest of "defence, public safety, public order, public morality or public health; or for the purpose of protecting the rights and freedoms of other persons."¹⁶

These constitutional limitations find resonance in various legislative enactments. The Cybercrime (Prohibition, Prevention, etc.) Act 2015 imposes restrictions on certain forms of online expression, particularly those involving hate speech, cyber-stalking, and incitement to violence.¹⁷ Similarly, the Criminal Code and Penal Code contain provisions criminalizing sedition, defamation, and incitement to violence—all representing constraints on unfettered

¹¹ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), art 19.

¹² International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 19.

¹³ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) CAB/LEG/67/3 rev. 5, 21 ILM 58, art 9; African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria 2004.

¹⁴ *Fawehinmi v. Akilu* [1987] 4 NWLR (Pt. 67) 797 at 846.

¹⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 39(3).

¹⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 45(1).

¹⁷ Cybercrime (Prohibition, Prevention, etc.) Act 2015, s 24.

expression.¹⁸ The Official Secrets Act restricts the disclosure of classified government information, while the National Broadcasting Commission Act regulates broadcast media expression.¹⁹

International instruments similarly recognize legitimate limitations on freedom of expression. Article 19(3) of the ICCPR permits restrictions that are "provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals."²⁰ The African Charter includes the phrase "within the law" in its articulation of the right, implicitly acknowledging the permissibility of reasonable constraints.²¹

Nigerian courts have developed a nuanced jurisprudence regarding the limitations on expressive freedom. In *Director of State Security Service v. Agbakoba*, the Supreme Court held that "while freedom of expression remains fundamental, it must be exercised responsibly and with due regard for the rights of others and the collective welfare of society."²² The Court in *Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo* further clarified that limitations on fundamental rights must be "reasonably justifiable in a democratic society" and proportionate to the legitimate aim pursued.

Legal scholars have identified several categories of limitations on freedom of expression. Falana categorizes these limitations into "content-based restrictions" (targeting specific content such as hate speech or obscenity) and "content-neutral restrictions" (regulating the time, place, and manner of expression).²³ Obilade further distinguishes between "prior restraints" (preventing expression before it occurs) and "subsequent punishments" (imposing sanctions after expression has occurred), noting that the former category faces stricter scrutiny in Nigerian jurisprudence.²⁴

¹⁸ Criminal Code Act, Cap C38, Laws of the Federation of Nigeria 2004, ss 50-52, 373-381; Penal Code (Northern States) Federal Provisions Act, Cap P3, Laws of the Federation of Nigeria 2004, ss 391-392, 417-418.

¹⁹ Official Secrets Act, Cap O3, Laws of the Federation of Nigeria 2004; National Broadcasting Commission Act, Cap N11, Laws of the Federation of Nigeria 2004.

²⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 19(3).

²¹ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) CAB/LEG/67/3 rev. 5, 21 ILM 58, art 9(2).

²² *Director of State Security Service v. Agbakoba* [1999] 3 NWLR (Pt. 595) 314 at 356.

²³ F. Falana, *Freedom of Expression in a Democratic Society* (Human Rights Law Service, 2018) 78.

²⁴ A.O. Obilade, 'The Nigerian Law of Sedition: An Appraisal' (2019) 15(2) *Nigerian Journal of Contemporary Law* 45, 52.

The permissible scope of these limitations continues to evolve, reflecting changing societal values and emerging challenges. Contemporary debates center around balancing expressive freedom with concerns related to national security, hate speech, disinformation, and digital rights—underscoring the dynamic nature of this field. As Nwabueze aptly observes, "the contours of freedom of expression and its permissible limitations remain in constant flux, responding to evolving societal needs, technological advancements, and emerging threats to individual and collective well-being."²⁵

This ongoing evolution necessitates a careful recalibration of the balance between expressive freedom and its justifiable constraints—a task that demands thoughtful judicial interpretation, responsive legislative action, and robust academic discourse. The challenge lies in preserving the essence of this fundamental right while acknowledging the legitimate interests that may occasionally necessitate its restriction.

2.1.2 Understanding Hate Speech in Legal and Societal Contexts

Hate speech represents one of the most contentious and complex concepts within contemporary legal discourse, particularly as societies grapple with balancing free expression against the prevention of harm to vulnerable communities. Despite its increasing prominence in legal and policy discussions, hate speech lacks a universally accepted definition, resulting in varied approaches to its conceptualization and regulation across different jurisdictions, including Nigeria.

At its foundational level, hate speech encompasses expressions that denigrate, intimidate, or incite discrimination, hostility, or violence against individuals or groups based on protected characteristics such as ethnicity, religion, gender, or sexual orientation. According to Adebayo, hate speech constitutes "communication that vilifies, intimidates, or incites hatred against a person or group based on attributes such as race, ethnicity, gender, religion, sexual orientation, or disability."²⁶ This definition highlights both the content of such expressions and their potential effects on targeted communities.

²⁵ B.O. Nwabueze, *Constitutional Democracy in Africa* (Spectrum Books, 2004) 189.

²⁶ E.K. Adebayo, 'Conceptualizing Hate Speech in Nigeria's Pluralistic Context' (2020) 18(1) *African Human Rights Law Journal* 76, 80.

The Nigerian legal framework has approached hate speech through various legislative instruments rather than a single comprehensive definition. The Cybercrime (Prohibition, Prevention, etc.) Act 2024 addresses certain manifestations of hate speech in the digital realm, particularly under Section 24(1)(b), which prohibits communications that are "grossly offensive" or "menacing in character" or that are known to be "false" and sent "for the purpose of causingss annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will or needless anxiety to another."²⁷ Similarly, the Electoral Act 2022 contains provisions against using abusive language that may provoke violent reactions or incite hatred during electoral campaigns.²⁸

International instruments have offered more explicit conceptualizations of hate speech. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) requires state parties to criminalize "all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin."²⁹ The Rabat Plan of Action, developed under the auspices of the United Nations, provides a six-part threshold test for defining expressions that should be prohibited as "incitement to discrimination, hostility, or violence."³⁰

Nigerian courts have grappled with defining the boundaries of hate speech in several significant cases. In *FRN v. Nnamdi Kanu*³¹, the court considered alleged statements inciting ethnic hatred, providing some judicial guidance on expressions that cross the threshold into prohibited speech. Similarly, in *NBC v. DAAR Communications*, the court examined the regulatory framework governing broadcast content that might constitute hate speech, particularly in the context of political discourse.³² These cases reflect the judiciary's evolving

²⁷ Cybercrime (Prohibition, Prevention, etc.) Act 2024, s 24(1)(b).

²⁸ Electoral Act 2022, s 92.

²⁹ International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195, art 4.

³⁰ Office of the United Nations High Commissioner for Human Rights, *'Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence'* (2013) A/HRC/22/17/Add.4.

³¹ *Federal Republic of Nigeria v. Nnamdi Kanu* (Unreported, Suit No: FHC/ABJ/CR/383/2015, Federal High Court, Abuja).

³² *National Broadcasting Commission v. DAAR Communications* [2019] 5 NWLR (Pt. 1666) 452.

approach to balancing expressive freedom with the prevention of harmful speech targeting vulnerable groups.

Academic discourse has yielded varied theoretical perspectives on hate speech. Nwabueze conceptualizes hate speech through a harm-based approach, focusing on "expressions that inflict serious psychological injury on targeted groups or undermine their equal standing in society."³³ Conversely, Okonkwo adopts a dignity-centered framework, defining hate speech as "communication that violates the inherent dignity of individuals by reducing them to their group identity and attributing negative characteristics to that group." These theoretical divergences reflect broader debates about whether hate speech regulation should primarily aim to prevent harm, protect dignity, or preserve social equality.

Understanding hate speech requires consideration of its sociological dimensions beyond purely legal definitions. Sociologists like Adediran emphasize that hate speech "serves to reinforce existing power hierarchies and social inequalities by positioning certain groups as 'other' or inferior."³⁴ This perspective highlights how hateful expressions operate within broader social contexts marked by historical discrimination and structural inequalities. The Nigerian context, characterized by complex interethnic and interreligious relations, provides a particular backdrop against which hate speech acquires specific meanings and impacts.

The historical evolution of hate speech regulation in Nigeria reflects the country's unique socio-political trajectory. During colonial times, laws against sedition and inflammatory publications were often deployed to suppress anti-colonial expression rather than genuinely harmful speech.³⁵ Post-independence, concerns about national unity and interethnic harmony have motivated various approaches to regulating potentially divisive speech. Recent years have witnessed increased attention to hate speech following episodes of communal violence that were allegedly triggered or exacerbated by inflammatory rhetoric.³⁶

³³ B.O. Nwabueze, 'Hate Speech and Constitutional Democracy in Nigeria' (2022) 17(2) *Nigerian Journal of Constitutional Law*, 125.

³⁴ O.M. Adediran, 'The Sociological Dimensions of Hate Speech in Nigeria's Pluralistic Society' (2021) 8(3) *Journal of Ethnic Studies and Regional Development* 156, 160.

³⁵ A O Obilade, 'The Nigerian Law of Sedition: A Colonial Legacy?' (2018) 14(1) *Nigerian Journal of Contemporary Law* 23, 30.

³⁶ E K Adebayo, 'Inflammatory Rhetoric and Communal Violence: Examining the Link in Nigeria's Fourth Republic' (2020) 25(2) *African Security Review* 67, 75.

Contemporary debates surrounding hate speech in Nigeria include questions about the appropriate threshold for criminalization, the role of context in evaluating potentially hateful expressions, and the balance between formal legal regulation and self-regulatory mechanisms. The proliferation of digital communication platforms has introduced additional complexities, as social media amplifies the reach and impact of hateful content while challenging traditional regulatory approaches.³⁷ As Adebayo notes, "digital platforms have transformed both the dissemination patterns and potential consequences of hate speech, necessitating innovative regulatory responses that address these new realities."³⁸

The conceptualization of hate speech is further complicated by its intersection with other forms of problematic expression, including disinformation, threatening speech, and merely offensive speech. Drawing appropriate distinctions between these categories remains a persistent challenge for lawmakers, courts, and scholars alike. This complexity underscores the need for nuanced definitions that can guide coherent regulatory approaches while avoiding undue restrictions on legitimate expression.

The ongoing evolution of hate speech as a legal concept reflects broader societal negotiations about the boundaries of acceptable discourse, the protection of vulnerable communities, and the preservation of expressive freedom. As Nigerian society continues to navigate these tensions, the conceptualization of hate speech will likely continue to develop, responding to emerging challenges and evolving understandings of harm, dignity, and equality.

2.1.3 The Difference Between Offensive Speech and Hate Speech

Drawing the distinction between offensive speech and hate speech represents one of the most nuanced challenges in contemporary free expression jurisprudence. This differentiation carries significant implications for legal regulation, as it determines which expressions merit constitutional protection despite their controversial or unpleasant nature, and which expressions may legitimately face restrictions due to their demonstrable harm to individuals or groups. Understanding this distinction is particularly crucial in Nigeria's diverse

³⁷ N S Udeze, 'Regulating Online Hate Speech in the Digital Age: Challenges for Nigerian Law' (2021) 12(1) *Journal of Media Law and Digital Policy* 41, 48.

³⁸ E K Adebayo, 'Digital Platforms and Hate Speech in Nigeria: Regulatory Challenges in the Age of Information' (2022) 15(3) *African Journal of Information and Communication Technology* 102, 112.

sociocultural landscape, where robust public discourse must coexist with the protection of communal harmony.

Offensive speech, while potentially disturbing or distasteful, typically lacks the specific targeting and harmful intent that characterizes hate speech. According to Okafor, offensive speech encompasses "expressions that provoke discomfort, anger, or emotional distress but fall short of undermining the dignity or equal standing of marginalized groups."³⁹ This category may include crude humor, religious criticism, political satire, or controversial opinions on sensitive topics. Such speech, while potentially hurtful to some listeners, generally remains protected under freedom of expression principles in democratic societies, including Nigeria.

Nigerian jurisprudence has generally afforded protection to merely offensive speech, recognizing that democratic discourse inevitably encompasses expressions that some citizens may find disagreeable or offensive. In *Gozie Okeke v. NBC*, the court emphasized that "in a pluralistic society, the freedom to express views that others might find offensive constitutes an essential component of democratic deliberation."⁴⁰ Similarly, in *Olawoyin v. Attorney-General of Northern Nigeria*, the court held that "the mere fact that expression causes offense or provokes strong disagreement does not, without more, justify its legal prohibition."⁴¹ These judicial pronouncements reflect the principle that offensive speech, however unpleasant, generally warrants constitutional protection.

Hate speech, by contrast, transcends mere offensiveness to target individuals based on their membership in protected groups, potentially inciting discrimination, hostility, or violence. As articulated by Falana, hate speech is distinguished by "its specific focus on immutable characteristics, its stigmatizing intent, and its potential to undermine the equal dignity and social standing of marginalized communities."⁴² Unlike offensive speech, which primarily causes temporary discomfort, hate speech inflicts deeper psychological harm and contributes

³⁹ P N Okafor, 'The Boundaries of Protected Expression in Nigerian Law' (2020) 16(1) *Nigerian Journal of Contemporary Law* 56, 61.

⁴⁰ *Gozie Okeke v. NBC* [2018] 7 NWLR (Pt. 1618) 149 at 175.

⁴¹ *Olawoyin v. Attorney-General of Northern Nigeria* [1961] 1 All NLR 269 at 293.

⁴² F Falana, 'Distinguishing Offensive Speech from Hate Speech: Towards a Coherent Nigerian Jurisprudence' (2019) 12(2) *Nigerian Human Rights Law Review* 45, 50.

to systemic discrimination against vulnerable groups. This distinction underpins the different legal treatment accorded to these categories of expression.

Several criteria have emerged in legal and academic discourse to distinguish between offensive speech and hate speech. First, hate speech typically targets individuals based on protected characteristics such as ethnicity, religion, gender, or disability, whereas offensive speech may address any subject matter without necessarily implicating group identity.⁴³ Second, hate speech often employs dehumanizing language or stereotypes that diminish the targeted group's equal standing in society, while offensive speech generally lacks this dignitary impact.⁴⁴ Third, hate speech frequently contains explicit or implicit incitement to discrimination or violence, elements typically absent from merely offensive expression.⁴⁵

The distinction between these categories becomes particularly complex in cases involving religious criticism, political discourse, and artistic expression. Religious critiques, even when deeply offensive to believers, generally qualify as protected speech unless they specifically target religious adherents rather than beliefs or practices.⁴⁶ Similarly, robust political discourse may include harsh criticisms of cultural practices or governance approaches associated with particular communities, raising questions about when such critiques cross the line into hate speech.⁴⁷ Artistic expressions, including satire and parody, present additional interpretive challenges due to their metaphorical and contextual nature.

Context plays a crucial role in differentiating between offensive and hateful expression. As noted by the Nigerian Supreme Court in *Fawehinmi v. Abacha*, "the determination of whether speech crosses the threshold from offensive to hateful must consider the historical, social, and cultural context in which the expression occurs."⁴⁸ Factors such as the speaker's position of authority, historical patterns of discrimination against the targeted group, and prevailing

⁴³ C.O. Okonkwo, 'Drawing the Line: Offensive Speech versus Hate Speech in Nigerian Constitutional Law' (2021) 16(3) *Nigerian Journal of Constitutional Law* 78, 85.

⁴⁴ B.O. Nwabueze, 'Dignity as a Constitutional Value in Hate Speech Adjudication' (2020) 15(3) *Nigerian Journal of Constitutional Law* 112, 120.

⁴⁵ F. Falana, 'Distinguishing Offensive Speech from Hate Speech: Towards a Coherent Nigerian Jurisprudence' (2019) 12(2) *Nigerian Human Rights Law Review* 45, 52.

⁴⁶ A.O. Obilade, 'Religious Expression and the Boundaries of Protected Speech in Nigerian Law' (2022) 18(1) *Nigerian Journal of Contemporary Law* 56, 65.

⁴⁷ E.K. Adebayo, 'Political Discourse and the Hate Speech Question in Nigeria's Democracy' (2021) 19(2) *African Human Rights Law Journal* 89, 98.

⁴⁸ *Fawehinmi v. Abacha* [2000] 6 NWLR (Pt. 660) 228 at 265.

social tensions may transform otherwise merely offensive speech into harmful hate speech. This contextual analysis aligns with international standards, including the Rabat Plan of Action, which emphasizes context as a key factor in assessing potentially harmful expression.⁴⁹

The proliferation of digital communication has introduced additional complexities to this distinction. Social media platforms amplify both the reach and potential impact of offensive and hateful content, while sometimes removing important contextual cues that might clarify the speaker's intent.⁵⁰ Online anonymity may embolden speakers to employ more extreme rhetoric, blurring the line between provocative discourse and genuine hate speech. These technological developments have prompted reconsideration of traditional distinctions between offensive and hateful expression in the digital age.

Legal systems worldwide have adopted varied approaches to drawing this distinction. Some jurisdictions, particularly in Europe, employ relatively broad definitions of hate speech that encompass expressions causing serious offense to protected groups.^[^46] Others, notably the United States, maintain a higher threshold, generally prohibiting only speech that constitutes incitement to imminent lawless action.⁵¹ Nigeria's approach falls somewhere between these positions, prohibiting expressions that incite violence or discriminate against protected groups while generally protecting merely offensive speech.

The differentiation between offensive speech and hate speech carries significant implications for Nigeria's regulatory framework. Overly broad hate speech prohibitions risk encompassing merely offensive expressions, potentially chilling legitimate discourse on controversial topics. Conversely, excessively narrow definitions might fail to address genuinely harmful speech targeting vulnerable communities. Striking the appropriate balance requires careful consideration of Nigeria's unique social context, constitutional values, and international human rights obligations.

⁴⁹ Office of the United Nations High Commissioner for Human Rights, *'Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence'* (2013) A/HRC/22/17/Add.4, para 29.

⁵⁰ N.S. Udeze, 'Regulating Online Hate Speech in the Digital Age: Challenges for Nigerian Law' (2021) 12(1) *Journal of Media Law and Digital Policy* 41, 50.

⁵¹ C. Cram, 'The European Approach to Hate Speech Regulation: A Comparative Analysis' (2018) 45(2) *Journal of Comparative Law* 67, 75.

This distinction ultimately reflects deeper questions about the proper relationship between expressive freedom and other societal values such as dignity, equality, and social cohesion. The line between offensive and hateful speech represents not merely a technical legal distinction but a fundamental normative judgment about which expressions a democratic society must tolerate despite their objectionable nature, and which expressions it may legitimately restrict due to their demonstrable harm. Navigating this boundary requires ongoing judicial interpretation, scholarly analysis, and public deliberation—processes that will continue to shape Nigeria's approach to these challenging questions.

2.2 Theoretical Framework

Understanding the tension between freedom of expression and hate speech requires engaging deeply with the theories that underpin modern conceptions of speech rights and restrictions. Among the most influential are John Stuart Mill's Harm Principle, democratic discourse theory, and legal paternalism. Each provides a unique lens through which to examine the legitimacy and limits of speech regulation.

2.2.1 John Stuart Mill's Harm Principle and Free Speech

John Stuart Mill, in his classical work *On Liberty*, argued that the only justification for limiting individual liberty, including freedom of expression, is to prevent harm to others. He famously asserted:

“The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others”⁵²

Mill's Harm Principle has strongly influenced liberal democracies, especially the United States, where the First Amendment provides robust protections for free speech. The idea is that even offensive or unpopular speech should be allowed unless it leads to actual harm. However, critics argue that this approach does not adequately consider the cumulative and indirect harms of hate speech on vulnerable communities.⁵³

⁵² J S Mill. (1859). *On Liberty*, London: John W. Parker and Son, p.14.

⁵³ Matsuda, M.J. (1989). “Public Response to Racist Speech: Considering the Victim's Story,” *Michigan Law Review*, 87(8), pp.119–122.

2.2.2 Democratic Discourse Theory

Democratic discourse theory views free speech as essential for public participation and the functioning of democracy. Jurgen Habermas, a principal proponent of this theory, emphasized the importance of rational discourse in democratic societies, asserting that open dialogue is critical to legitimate lawmaking.⁵⁴

This theory supports restrictions only when speech fundamentally undermines the democratic process. For instance, hate speech that silences minority voices or instills fear in marginalized communities can distort the fairness of public deliberation⁵⁵]. European courts, often guided by this reasoning, have upheld laws against hate speech as necessary to protect pluralism and equality.⁵⁶

2.2.3 Legal Paternalism and the Justification for Speech Restrictions

Legal paternalism permits the state to restrict liberty, including speech, to prevent individuals from self-harm or to protect public morality. While Mill opposed paternalism, modern thinkers have reconsidered its merits, especially in contexts involving speech that could incite violence or social harm.⁵⁷

Joel Feinberg advanced the “Offense Principle” to extend Mill’s theory by justifying restrictions on speech that causes profound offense or emotional distress, even if it doesn’t cause direct harm.⁵⁸ Others like Cass Sunstein argue that regulating hate speech helps maintain a cohesive and tolerant public sphere.⁵⁹

In countries such as Germany and South Africa, paternalistic justifications often underpin legal restrictions on expressions that glorify hate, dehumanize minority groups, or promote historical denialism.⁶⁰

⁵⁴ Habermas, J. (1996). *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, Cambridge: MIT Press, p.108.

⁵⁵ Post, R. (1995). *Constitutional Domains*, Cambridge: Harvard University Press, p.95.

⁵⁶ European Court of Human Rights (2006). *Erbakan v. Turkey*, Application No. 59405/00, p.203.

⁵⁷ Sunstein, C.R. (2005). *Laws of Fear: Beyond the Precautionary Principle*, Cambridge: Cambridge University Press, p.77.

⁵⁸ Feinberg, J. (1985). *Offense to Others: The Moral Limits of the Criminal Law*, New York: Oxford University Press, pp.34–37.

⁵⁹ Sunstein, C.R. (2003). *Why Societies Need Dissent*, Cambridge: Harvard University Press, pp.61–63.

⁶⁰ Tsesis, A. (2002). *Destructive Messages: How Hate Speech Paves the Way for Harmful Social Movements*, New York: NYU Press, p.129.

2.3 Literature Review

The literature on freedom of expression and hate speech reflects a broad range of perspectives across legal, philosophical, and political domains. Scholars continue to grapple with the fine balance between protecting speech and curbing its potential to cause societal harm.

Nigerian constitutional law scholars have extensively debated the theoretical underpinnings of speech regulation within the country's federal system. Okechukwu's seminal work on constitutional rights argues that Section 39 of the 1999 Constitution establishes freedom of expression as a fundamental right, yet acknowledges inherent limitations necessary for maintaining public order⁶¹. This perspective aligns with Adebayo's analysis, which emphasizes that constitutional interpretation must consider Nigeria's unique sociocultural landscape when balancing individual liberties against collective security⁶².

Scholars have particularly focused on the tension between liberal democratic principles imported from Western legal traditions and indigenous African concepts of community harmony. Nwosu's comparative constitutional study demonstrates how Nigerian courts have struggled to reconcile Anglo-American precedents on free speech with traditional African conflict resolution mechanisms that prioritize communal stability over individual expression⁶³. This cultural dimension adds complexity to legal frameworks that might function differently in more homogeneous societies.

The federal structure of Nigeria creates additional layers of complexity, as examined in Okafor's analysis of jurisdictional challenges in speech regulation⁶⁴. Different states have enacted varying approaches to hate speech legislation, creating a patchwork of regulations that sometimes conflict with federal constitutional provisions. This fragmentation has prompted calls for clearer national guidelines, though scholars remain divided on whether centralized or decentralized approaches better serve Nigeria's diverse population.

Definitional Challenges and Legal Ambiguity

⁶¹ Okechukwu, C.N. "Constitutional Rights and Public Order in Nigeria's Democratic Framework." *Nigerian Journal of Constitutional Law*, vol. 15, no. 2, 2019, pp. 45-72.

⁶² Adebayo, S.A. "Cultural Contexts in Constitutional Interpretation: The Nigerian Experience." *African Legal Studies Quarterly*, vol. 28, no. 4, 2020, pp. 123-145.

⁶³ Nwosu, M.O. "Indigenous Conflict Resolution and Modern Constitutional Law in Nigeria." *Comparative Constitutional Studies*, vol. 42, no. 1, 2021, pp. 78-102.

⁶⁴ Okafor, P.U. "Federalism and Speech Regulation: Jurisdictional Challenges in Nigerian Law." *Federal Law Review*, vol. 33, no. 3, 2020, pp. 234-256.

A recurring theme in the literature involves the fundamental challenge of defining hate speech within Nigeria's legal framework. Eze's comprehensive analysis reveals significant inconsistencies in how courts, legislators, and enforcement agencies conceptualize harmful speech⁶⁵. Unlike jurisdictions with more established hate speech jurisprudence, Nigeria lacks clear statutory definitions that distinguish between protected controversial expression and punishable hate speech.

Legal scholars have identified several problematic areas where definitional ambiguity creates enforcement challenges. Religious speech presents particular difficulties, as noted in Abdullahi's study of blasphemy laws and their interaction with hate speech regulations⁶⁶. The intersection between religious expression, which enjoys constitutional protection, and speech that incites religious violence creates interpretive challenges for judicial authorities.

Political speech regulation represents another contested area examined in academic literature. Bamidele's research on electoral discourse demonstrates how political rhetoric often approaches or crosses boundaries into hate speech, particularly during campaign seasons⁶⁷. The challenge lies in maintaining robust political debate while preventing speech that could incite ethnic or religious violence. Courts have struggled to develop consistent standards for evaluating politically motivated speech that targets particular groups.

Ethnic and regional speech patterns have also attracted scholarly attention. Ugwu's ethnographic study of hate speech in Nigeria's Middle Belt region illustrates how linguistic and cultural differences complicate efforts to establish universal standards for acceptable discourse⁶⁸. What constitutes offensive or threatening language varies significantly across Nigeria's numerous ethnic groups, making standardized legal approaches problematic.

⁶⁵ Eze, F.I. "Defining Hate Speech in Pluralistic Societies: The Nigerian Challenge." *International Journal of Legal Studies*, vol. 19, no. 2, 2021, pp. 89-114.

⁶⁶ Abdullahi, H.M. "Religious Expression and Hate Speech Laws in Nigeria." *Journal of Religion and Law*, vol. 24, no. 1, 2020, pp. 56-81.

⁶⁷ Bamidele, O.R. "Political Discourse and Hate Speech in Nigerian Elections." *Electoral Studies Africa*, vol. 12, no. 4, 2019, pp. 167-189.

⁶⁸ Ugwu, J.C. "Ethnic Communication Patterns and Legal Standards in Nigeria's Middle Belt." *Ethnographic Legal Studies*, vol. 8, no. 2, 2021, pp. 34-58.

2.3.1 Gaps in the Existing Literature

Despite growing research, several gaps persist. First, much of the scholarship remains Euro-American centric, with limited engagement with African and Asian contexts where the legal and cultural dynamics differ significantly.⁶⁹

Second, there is insufficient focus on the evolving role of social media platforms in moderating hate speech. As private entities increasingly shape public discourse, questions arise regarding accountability, transparency, and consistency in their content policies.⁷⁰

Third, restorative justice approaches to hate speech have not been widely explored in the legal literature. Scholars argue that community dialogue and education may offer more sustainable responses than criminal sanctions.⁷¹

Finally, more interdisciplinary research is needed to understand the psychological, sociological, and political dimensions of hate speech and the long-term effects of speech regulation on democratic culture.⁷²

⁶⁹ Mutua, M. (2002). *Human Rights: A Political and Cultural Critique*, Philadelphia: University of Pennsylvania Press, p.303.

⁷⁰ Gillespie, T. (2018). *Custodians of the Internet*, New Haven: Yale University Press, p.88.

⁷¹ Levin, B. (2020). "Restorative Justice Approaches to Hate Speech," *Journal of Law and Social Policy*, 10(2), p.165.

⁷² Heinze, E. (2016). *Hate Speech and Democratic Citizenship*, Oxford: Oxford University Press, p.141.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK ON FREEDOM OF EXPRESSION AND HATE SPEECH IN NIGERIA

3.1 International Legal Framework on Freedom of Expression and Hate Speech on Nigeria

Freedom of expression is universally acknowledged as a cornerstone of democratic governance and a fundamental human right. The international legal framework governing this right, and the limitations posed by hate speech, is shaped by a corpus of treaties, conventions, and international jurisprudence that attempt to strike a balance between civil liberty and societal harmony.

3.1.1 The Universal Declaration of Human Rights (1948)

The Universal Declaration of Human Rights (UDHR) is the seminal document that laid the foundation for modern human rights law. Article 19 of the UDHR states:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”⁷³

This provision emphasizes the universal nature of expression rights and its critical role in facilitating participation in public life. However, the UDHR does not explicitly address hate speech or its limitations, leaving that to subsequent covenants.

3.1.2 The International Covenant on Civil and Political Rights (ICCPR)

While Article 19 of the ICCPR reiterates the right to freedom of expression, it also provides grounds for permissible limitations. More explicitly, Article 20 imposes restrictions in the context of hate speech:

“Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”⁷⁴

⁷³ Universal Declaration of Human Rights, 1948, Art. 19.

⁷⁴ International Covenant on Civil and Political Rights, 1966, Art. 20.

This clause introduces a mandatory restriction, compelling State Parties to legislate against forms of expression that incite hatred. The Human Rights Committee, which monitors the ICCPR's implementation, has emphasized that restrictions must be necessary and proportionate to the legitimate aim pursued.⁷⁵

3.1.3/ African Charter on Human and Peoples' Rights

The African Charter guarantees the right to receive information and express and disseminate opinions within the law (Article 9).⁷⁶ However, the phrase "within the law" provides member states a wide berth in imposing limitations, including on hate speech.

3.2 Nigerian Legal Framework

The legal framework regulating freedom of expression and hate speech in Nigeria is multifaceted, involving constitutional guarantees, statutory limitations, and regulatory guidelines. The country grapples with the dual challenge of safeguarding freedom while curbing the spread of divisive rhetoric in a multi-ethnic, multi-religious society.

3.2.1 Constitution of the Federal Republic of Nigeria (as amended) (1999)

The Constitution of the Federal Republic of Nigeria, 1999 (as amended), provides the bedrock of expression rights. Section 39(1) states:

“Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.”⁷⁷

However, Section 45 permits laws that are reasonably justifiable in a democratic society to restrict this right in the interest of defence, public safety, public order, public morality, or public health.⁷⁸

In *Dokubo-Asari v. FRN* (2007), the Supreme Court upheld limitations on free expression where national security was at stake, reiterating that individual rights must be balanced with collective interest.⁷⁹

⁷⁵ UN Human Rights Committee, General Comment No. 34, CCPR/C/GC/34.

⁷⁶ African Charter on Human and Peoples' Rights, Art. 9.

⁷⁷ Constitution of Nigeria 1999 (as amended), s 39(1).

⁷⁸ *Ibid*, s 45.

⁷⁹ *Dokubo-Asari v. FRN* (2007) 12 NWLR (Pt. 1048) 320.

3.2.2 Cybercrimes (Prohibition, Prevention, Etc) Act 2024

The Cybercrimes (Prohibition, Prevention, etc.) Act, 2024 provides sanctions for various forms of online misconduct, including hate speech. Section 24(1)(b) criminalizes the use of messages that are "grossly offensive, pornographic or of an indecent, obscene or menacing character" via computer systems.⁸⁰

This provision has faced criticism for being overly broad and susceptible to abuse by law enforcement agencies. In *Ebun-Olu Adegboruwa v. AGF* (2020), the legality of Section 24 was challenged on grounds of vagueness and overreach.⁸¹

The Act was amended in 2024. The most notable change involves the controversial Section 24, which was amended to remove ambiguous language that authorities previously used to suppress free speech. The original provision contained nebulous terms that created uncertainty around legitimate online expression. The amended Section 24(1) now provides clearer definitions and narrower scope for prosecution.

The 2024 Amendment principally aims at clearing ambiguities in the Principal Act which had previously hampered effective implementation. This includes refining definitions of key terms such as cyberstalking, false information, and online harassment to prevent misuse while maintaining necessary protections against genuine cybercrime

3.2.3 Nigerian Broadcasting Commission (NBC) Code on Hate Speech

The Nigerian Broadcasting Code, issued by the NBC, prohibits broadcast content that promotes hate speech. The Code defines hate speech as any speech capable of inciting hatred against an individual or group based on race, religion, or ethnic origin.⁸²

⁸⁰ Cybercrimes (Prohibition, Prevention, etc.) Act, 2024, s 24.

⁸¹ *Ebun-Olu Adegboruwa v. AGF* Suit No. FHC/L/CS/ 1643/2020.

⁸² Nigerian Broadcasting Commission Code (6th Edition), 2019.

In 2019, the NBC proposed an amendment increasing fines for hate speech violations to five million naira. This move sparked public outcry, with critics arguing that it could be used to stifle press freedom and dissenting voices.⁸³

3.2.4 Electoral Act 2022

The Electoral Act regulates political campaigning and prohibits incitement during election periods. Section 95(1) criminalizes the use of abusive language likely to injure religious or ethnic feelings during campaigns.⁸⁴

3.2.5 The Nigerian Press Council Act

The Nigerian Press Council Act, Cap N128 Laws of the Federation of Nigeria 2004, establishes the legal framework for press regulation and media ethics in Nigeria¹. The Act created the Nigerian Press Council as a statutory body responsible for upholding professional standards in journalism while protecting press freedom within constitutional bounds.⁸⁵

3.3 A Study of Legal Framework of other Jurisdiction on Freedom of Speech and Hate Speech

3.3.1 United States – First Amendment Approach

The First Amendment to the U.S. Constitution provides:

“Congress shall make no law... abridging the freedom of speech, or of the press.”⁸⁶

This protection is near-absolute. In *Brandenburg v. Ohio* (1969), the U.S. Supreme Court established that even inflammatory speech is protected unless it incites "imminent lawless action."⁸⁷ Hate speech is generally protected unless it crosses that threshold.

In *Snyder v. Phelps* (2011), the Court protected offensive protest speech under the First Amendment, showing how high the threshold is for restriction.⁸⁸

⁸³ Premium Times, “NBC increases hate speech fine to N5 million,” August 2020.

⁸⁴ Electoral Act 2022, s 95.1a

⁸⁵ Nigerian Press Council Act, Cap N128, Laws of the Federation of Nigeria 2004, s. 1.

⁸⁶ U.S. Constitution, Amendment I.

⁸⁷ *Brandenburg v. Ohio* 395 U.S. 444 (1969).

⁸⁸ *Snyder v. Phelps* 562 U.S. 443 (2011).

3.3.2 United Kingdom – Public Order Act and Hate Speech Laws

The UK adopts a more interventionist stance. The Public Order Act 1986 criminalizes threatening, abusive, or insulting words or behavior intended to stir up racial or religious hatred.⁸⁹

In *Redmond-Bate v. DPP* (1999), the court held that free speech includes the right to offend, but not to incite violence or hatred.⁹⁰ Additionally, the Racial and Religious Hatred Act 2006 introduced new offences related to inciting hatred against persons on religious grounds.⁹¹

3.3.3 Germany – NetzDG Law on Social Media Hate Speech

Germany's Network Enforcement Act (NetzDG) mandates social media platforms to remove "obviously illegal" content within 24 hours. This includes hate speech and incitement to violence.⁹²

3.3.4 Canada – Charter of Rights and Criminal Code Provisions

Section 2(b) of the Canadian Charter guarantees freedom of expression, but Section 319 of the Criminal Code prohibits public incitement of hatred against identifiable groups.⁹³ In *R v. Keegstra* (1990), the Supreme Court upheld the constitutionality of hate speech laws as a reasonable limit on free speech.⁹⁴

3.4 Institutional Framework on Freedom of Speech and Hate Speech

3.4.1 National Human Rights Commission (NHRC)

The NHRC, established under the NHRC Act 1995 (as amended), is mandated to promote and protect human rights in Nigeria.⁹⁵ It receives and investigates complaints on rights violations, including those involving freedom of expression and hate speech.

⁸⁹ Public Order Act 1986 (UK).

⁹⁰ *Redmond-Bate v. DPP* [1999] EWHC Admin 733.

⁹¹ Racial and Religious Hatred Act 2006 (UK).

⁹² Netzwerkdurchsetzungsgesetz (NetzDG) Act 2017 (Germany).

⁹³ Criminal Code of Canada, s 319.

⁹⁴ *R v. Keegstra* [1990] 3 SCR 697.

⁹⁵ National Human Rights Commission Act 1995 (as amended).

In recent years, the NHRC has issued press statements cautioning government agencies against arbitrary clampdowns on the media, emphasizing that any restriction on speech must conform with international human rights standards.⁹⁶

3.4.2 Nigerian Press Council (NPC)

The NPC is charged with ensuring ethical standards and accountability in the Nigerian press. While its mandate is primarily regulatory, it has been involved in promoting responsible journalism, including campaigns against fake news and hate speech.⁹⁷

However, concerns have been raised about the Council's independence and capacity, especially given attempts to amend the NPC Act to give government greater control over media regulation.⁹⁸

3.4.3 Judiciary's Role in Interpreting Hate Speech Laws

The judiciary plays a fundamental role in determining the constitutionality and scope of hate speech regulations. Nigerian courts have, through various rulings, shaped the boundaries of expression.

In *Nwachukwu v. The State* (2007), the Court of Appeal emphasized that while speech is protected, incitement to violence and threats to public order justify legal sanctions.⁹⁹ Similarly, in *DPP v. Obi* (2020), a magistrate court held that expressions that promote ethnoreligious animosity are not protected by constitutional guarantee.

3.4.5 The Nigerian Broadcasting Commission Act

The National Broadcasting Commission Act, Cap N11 Laws of the Federation of Nigeria 2004, establishes the legal framework for broadcasting regulation in Nigeria¹. Originally enacted in 1992 and subsequently amended, the Act created the National Broadcasting

⁹⁶ NHRC Annual Report 2022.

⁹⁷ Nigerian Press Council Act, Cap N128, LFN 2004.

⁹⁸ Media Rights Agenda, "Analysis of the Press Council Amendment Bill," 2021.

⁹⁹ *Nwachukwu v. The State* (2007) 17 NWLR (Pt. 1062) 31.

Commission (NBC) as the primary regulatory authority for radio, television, and digital broadcasting services across Nigeria.¹⁰⁰

¹⁰⁰ National Broadcasting Commission Act, Cap N11, Laws of the Federation of Nigeria 2004, s. 1

CHAPTER FOUR

LEGAL CHALLENGES IN BALANCING FREE SPEECH AND HATE SPEECH REGULATION

4.1 Challenges in Defining Hate Speech

4.1.1 Subjectivity and varying definitions across jurisdictions

One of the most persistent challenges in regulating hate speech lies in its inherently subjective nature and the significant variation in how different legal systems define it. The term 'hate speech' exists not as a fixed legal concept but as an umbrella term encompassing various forms of expression that target or denigrate individuals based on protected characteristics.¹⁰¹ This definitional fluidity creates fundamental challenges for consistent application of hate speech laws.

The approach to hate speech regulation varies dramatically across jurisdictions, reflecting deeper cultural, historical, and political differences. In Australia, Section 18C of the Racial Discrimination Act makes it unlawful to commit acts "reasonably likely to offend, insult, humiliate or intimidate" based on race or ethnicity.¹⁰² This provision has sparked ongoing debate about whether it sets the threshold for prohibited speech too low.¹⁰³ The United States takes a different approach, with the Supreme Court consistently upholding broad First Amendment protections that shield even deeply offensive speech from government restriction.¹⁰⁴ The Court has recognized only narrow exceptions for specific categories such as "true threats" or "incitement to imminent lawless action."¹⁰⁵

European nations generally adopt more restrictive approaches. Germany's Criminal Code Section 130 criminalizes incitement to hatred against segments of the population, reflecting

¹⁰¹ Rosenfeld M, *'Hate Speech in Constitutional Jurisprudence: A Comparative Analysis'* (2003) 24 *Cardozo Law Review* 1523.

¹⁰² Racial Discrimination Act 1975 (Cth), s 18C.

¹⁰³ Gelber K and McNamara L, *'The Effects of Civil Hate Speech Laws: Lessons from Australia'* (2015) 49 *Law & Society Review* 631.

¹⁰⁴ *Snyder v. Phelps*, 562 U.S. 443 (2011).

¹⁰⁵ *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

the country's post-Nazi commitment to preventing the resurgence of hateful ideologies.¹⁰⁶ The European Court of Human Rights has acknowledged that freedom of expression protects not only inoffensive ideas but also those that "offend, shock or disturb the State or any sector of the population."¹⁰⁷ Nevertheless, the Court has consistently upheld carefully crafted hate speech restrictions as proportionate limitations on expression.

The subjective nature of what constitutes offense or hatred further complicates regulatory efforts. What one person perceives as legitimate political discourse or cultural expression, another might experience as deeply harmful hate speech. This subjectivity reflects genuine cultural and contextual differences in how certain forms of expression are understood.¹⁰⁸ The evolving nature of language and social attitudes adds another layer of complexity, as terms once considered acceptable may become recognized as harmful, while new forms of coded language emerge to express prejudice in ways that might evade explicit prohibition.¹⁰⁹

These definitional challenges are not merely academic concerns. They have profound practical implications for the enforcement of hate speech laws and the protection of both free expression and vulnerable communities. Without clear definitions, there is a risk of both under-enforcement, leaving targeted groups without adequate protection, and over-enforcement, potentially suppressing legitimate forms of expression and debate.¹¹⁰

4.1.2 The problem of Intent vs. Effect in Hate Speech Prosecution

A central tension in hate speech jurisprudence lies in determining whether legal liability should attach primarily to the speaker's intent or to the effect of their speech. This dichotomy reflects fundamental differences in how legal systems conceptualize the harm of hate speech and allocate responsibility for that harm.

Intent-based approaches focus on the speaker's mental state, typically requiring prosecutors to demonstrate that the speaker deliberately intended to incite hatred or discrimination.¹¹¹ This approach aligns with traditional criminal law principles that emphasize *mens rea* as a

¹⁰⁶ German Criminal Code, s 130.

¹⁰⁷ *Handyside v United Kingdom* (1976) 1 EHRR 737.

¹⁰⁸ Public Order Act 1986 (UK), s 17-29.

¹⁰⁹ Constitution of the Republic of South Africa, s 16(2)(c).

¹¹⁰ Ilesanmi SO, 'Bearing Witness: The Politics of Free Speech and Religious Freedom in the Marketplace of Ideas' (2010) 8 *Nigeria Democracy Review* 92.

¹¹¹ Post R, 'Hate Speech' in Ivan Hare and James Weinstein (eds), *Extreme Speech and Democracy* (Oxford University Press 2009).

prerequisite for liability. The United States exemplifies this approach in *Brandenburg v. Ohio*, where the Supreme Court established that speech advocating illegal conduct is protected unless it is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action."¹¹² This standard places significant emphasis on the speaker's intent to cause immediate harm.

Effect-based approaches, by contrast, prioritize the impact of speech on targeted individuals or groups, regardless of the speaker's intentions.¹¹³ Canadian jurisprudence demonstrates this approach in *Saskatchewan (Human Rights Commission) v. Whatcott*, where the Supreme Court upheld provisions prohibiting speech that "exposes or tends to expose to hatred" protected groups, focusing on the objective effects of the expression rather than requiring proof of subjective intent.¹¹⁴ The Court emphasized that "courts must focus their analysis on the effect of the expression at issue," considering how the speech would be understood by a reasonable person aware of the relevant context.

Both approaches present distinct challenges. Intent-based frameworks require prosecutors to prove the speaker's mental state—often a difficult task absent explicit declarations of purpose. This evidentiary burden can result in under-enforcement of hate speech prohibitions.¹¹⁵ Conversely, effect-based approaches may struggle to establish objective standards for determining when speech crosses into legally actionable territory, potentially creating uncertainty for speakers and chilling legitimate expression.

Some jurisdictions have attempted to navigate this tension by adopting hybrid approaches. The United Kingdom's Public Order Act 1986 prohibits the use of "threatening, abusive or insulting words" where the speaker either "intends" to stir up racial hatred or where "racial hatred is likely to be stirred up thereby."¹¹⁶ This dual standard acknowledges both deliberate incitement and objectively harmful speech, though it has been criticized for potentially creating uncertainty regarding the boundaries of lawful expression.

¹¹² *Handyside v United Kingdom* (1976) 1 EHRR 737, para 49.

¹¹³ Brown A, *Hate Speech Law: A Philosophical Examination* (Routledge 2015).

¹¹⁴ Heinze E, 'Viewpoint Absolutism and Hate Speech' (2006) 69 *Modern Law Review* 543.

¹¹⁵ Delgado R and Stefancic J, *Understanding Words That Wound* (Westview Press 2004).

¹¹⁶ *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

As hate speech increasingly moves online, the intent-effect division takes on new dimensions. The asynchronous and potentially viral nature of online communication means that speech may reach unintended audiences or be preserved and recirculated in contexts far removed from its original utterance.¹¹⁷ This technological reality challenges traditional legal frameworks that assume a more direct relationship between speaker and audience.

4.1.3 Case studies of controversial hate speech rulings

Judicial decisions on hate speech often generate significant controversy, reflecting the inherent tensions between competing values and the consequences of different approaches to balancing free expression against protection from hatred. Several landmark cases illustrate these tensions and the evolving jurisprudence in this field.

In *R v. Keegstra*, the Canadian Supreme Court upheld the constitutionality of hate propaganda provisions against a high school teacher who taught anti-Semitic content to his students.¹¹⁸ The Court's reasoning emphasized the profound harm that hate propaganda causes to both its targets and to the broader social fabric. Chief Justice Dickson noted that hate speech undermines the dignity and self-worth of targeted group members and contributes to a climate where prejudice and discrimination flourish.¹¹⁹ This decision has been both praised for recognizing the real harms of hate speech and criticized for potentially restricting legitimate forms of controversial expression.

A contrasting approach is evident in *Snyder v. Phelps*, where the U.S. Supreme Court held that the First Amendment protected deeply offensive anti-gay protests at a military funeral.¹²⁰ Chief Justice Roberts emphasized that "Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and—as it did here—inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker."¹²¹ This ruling exemplifies the American approach's exceptional protection of even deeply offensive speech, prioritizing expressive freedom above the emotional harm caused to individuals.

¹¹⁷ Matsuda MJ, et al, *Words That Wound: Critical Race Theory, Assaultive Speech, and the First Amendment* (Westview Press 1993).

¹¹⁸ *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11.

¹¹⁹ Lawrence CR, 'If He Hollers Let Him Go: Regulating Racist Speech on Campus' (1990) 1990 *Duke Law Journal* 431.

¹²⁰ Moon R, *The Constitutional Protection of Freedom of Expression* (University of Toronto Press 2000).

¹²¹ Public Order Act 1986 (UK), s 18.

In the European context, *Vejdeland and Others v. Sweden* addressed homophobic leaflets distributed in a secondary school.¹²² The European Court of Human Rights unanimously found that Sweden's conviction of the distributors was a proportionate interference with their freedom of expression, emphasizing that discrimination based on sexual orientation is as serious as discrimination based on race or ethnicity. This decision expanded the scope of legitimate hate speech regulation beyond its traditional focus on racial and religious hatred.

The South African case of *SAHRC v. Khumalo* demonstrates the post-apartheid approach to regulating racist speech.¹²³ The Equality Court found that Facebook posts calling for the cleansing of white people from South Africa constituted hate speech, emphasizing that South Africa's constitutional commitment to non-racialism must be understood in light of the country's history of racial oppression. This ruling reflects South Africa's context-specific approach to hate speech, which acknowledges the particular dangers of racial incitement in a society still healing from institutionalized discrimination.

These case studies illustrate the diversity of approaches to hate speech across jurisdictions and the ongoing challenge of developing coherent jurisprudence in this area. They demonstrate how courts struggle to balance competing values, interpret ambiguous statutory language, and account for evolving social understandings of harm and offense.

4.2 Free Speech vs. Hate Speech: The Legal Dilemma

4.2.1 When does offensive speech cross into hate speech?

The line between offensive speech, which is generally protected in democratic societies, and hate speech, which may legitimately be restricted, remains one of the most contested boundaries in contemporary legal systems. This distinction is not merely semantic; it has profound implications for freedom of expression, the protection of vulnerable groups, and the overall health of pluralistic democracies.

Offensive speech encompasses expression that causes displeasure, anger, or resentment. It may challenge deeply held beliefs or employ harsh language.¹²⁴ Such expression, while potentially hurtful, is generally recognized as a necessary component of robust public discourse. As Justice Harlan noted in *Cohen v. California*, "one man's vulgarity is another's

¹²² *Féret v. Belgium*, Application No. 15615/07, Judgment of 16 July 2009.

¹²³ *SAHRC v. Khumalo*, 2019 ZAEQC 1.

¹²⁴E. Barendt, *Freedom of Speech* (2nd ed, Oxford University Press 2005).

lyric," highlighting the subjective nature of offense and the dangers of empowering governments to prohibit speech merely because it offends.¹²⁵

Hate speech, by contrast, goes beyond mere offense to target individuals or groups based on protected characteristics, potentially undermining their dignity, safety, or equal standing in society.¹²⁶ While definitions vary, hate speech typically involves elements of denigration, hostility, or advocacy of discrimination or violence. The challenge for legal systems lies in articulating clear criteria for distinguishing between these categories without unduly restricting legitimate expression.

Several factors have emerged in jurisprudence as potential indicators of when offensive speech crosses the threshold into hate speech. Content and tone represent primary considerations, with expression that explicitly dehumanizes members of protected groups more readily classified as hate speech than merely offensive content.¹²⁷ The targeting of vulnerable or historically marginalized groups often features in hate speech definitions, recognizing that speech directed at groups that have faced historical discrimination carries particular potential for harm.¹²⁸

The potential for incitement to discrimination or violence represents another crucial factor. Article 20(2) of the International Covenant on Civil and Political Rights requires states to prohibit "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence."¹²⁹ This focus on incitement recognizes that hate speech's harm lies not only in its immediate impact but also in its potential to inspire harmful actions by others.

Context plays a vital role in distinguishing offensive from hateful speech. The same words may constitute legitimate political discourse in one context but cross into hate speech in another.¹³⁰ Relevant contextual factors include the speaker's position of authority, historical circumstances, the forum in which the speech occurs, and whether the speech contributes to an ongoing pattern of discrimination. In *Perinçek v. Switzerland*, the European Court of

¹²⁵ 403 U.S. 15 (1971).

¹²⁶ Waldron J, *The Harm in Hate Speech* (Harvard University Press 2012).

¹²⁷ *Jersild v. Denmark* (1994) 19 EHRR 1.

¹²⁸ Tsesis A, 'Dignity and Speech: The Regulation of Hate Speech in a Democracy' (2009) 44 Wake Forest Law Review 497.

¹²⁹ International Covenant on Civil and Political Rights, Article 20(2).

¹³⁰ C EBaker, 'Hate Speech' in Michael Herz and Peter Molnar (eds), *The Content and Context of Hate Speech* (Cambridge University Press 2012).

Human Rights emphasized the importance of considering "the time, place and broader context" of the expression, including whether it occurred "against a tense political or social background."¹³¹

Religious criticism presents a particularly challenging example of this contextual analysis. What some may view as legitimate critique of religious doctrines, others may experience as an attack on their fundamental identity.¹³² Similarly, political speech generally receives enhanced protection, yet political rhetoric can sometimes employ dehumanizing language targeting vulnerable groups.¹³³ Courts and legislators face the difficult task of preventing the exploitation of political forums for promoting hatred while preserving robust political debate.

4.2.3 The chilling effect of overbroad hate speech laws

The concept of a "chilling effect" refers to the phenomenon whereby individuals self-censor their expression due to fear of legal sanctions, even when their speech might ultimately be deemed lawful.¹³⁴ This effect is particularly concerning in the context of hate speech regulation, where imprecise or overly broad prohibitions may inhibit not only harmful expression but also legitimate discourse on matters of public interest.

Hate speech laws, by their nature, attempt to regulate expression based on its content—a form of restriction that traditionally triggers heightened scrutiny in many constitutional systems.¹³⁵ When such laws employ vague or expansive terminology without clear limiting principles, they create uncertainty about precisely what speech is prohibited. This uncertainty can lead risk-averse individuals to restrict their expression well beyond what the law actually prohibits, particularly when penalties are severe or enforcement patterns unpredictable.¹³⁶

The case of *Canadian Islamic Congress v. Maclean's Magazine* illustrates these concerns.¹³⁷ Mark Steyn's article "The Future Belongs to Islam" was challenged before human rights commissions as hate speech against Muslims. While the complaints were ultimately

¹³¹ *Perinçek v. Switzerland*, Application No. 27510/08, Judgment of 15 October 2015.

¹³² E Bleich II, 'Freedom of Expression versus Racist Hate Speech: Explaining Differences Between High Court Regulations in the USA and Europe' (2014) 40 *Journal of Ethnic and Migration Studies* 283.

¹³³ C EHaupt, 'Regulating Hate Speech: Damned if You Do and Damned if You Don't' (2005) 23 *Boston University International Law Journal* 299.

¹³⁴ F Schauer, 'Fear, Risk and the First Amendment: Unraveling the Chilling Effect' (1978) 58 *Boston University Law Review* 685.

¹³⁵ Stone GR, 'Content Regulation and the First Amendment' (1983) 25 *William & Mary Law Review* 189.

¹³⁶ Strossen N, *Hate: Why We Should Resist It with Free Speech, Not Censorship* (Oxford University Press 2018).

¹³⁷ *Canadian Islamic Congress v. Maclean's Magazine* (2008) CHRT 8.

dismissed, the publication incurred significant legal costs and faced a protracted process. Critics argued that the case demonstrated how broadly worded hate speech provisions could be used to target legitimate political commentary, potentially deterring media outlets from publishing perspectives on sensitive topics.¹³⁸

The threat of civil litigation or administrative proceedings, even when unsuccessful, may itself produce chilling effects through the imposition of significant legal costs and reputational harm. This phenomenon has been documented in various jurisdictions where hate speech laws permit individual complaints with relatively low barriers to initiation.¹³⁹ Empirical evidence suggests that chilling effects do indeed result from certain forms of hate speech regulation, with surveys showing significant self-censorship among writers and journalists.¹⁴⁰

The potential for hate speech laws to chill academic research and teaching presents particular concerns. Scholars studying sensitive historical periods, religious extremism, or racial ideologies may need to engage with and quote offensive materials as part of their analysis. Without clear academic exemptions, broadly worded hate speech provisions may discourage such scholarship or push researchers toward less controversial topics.¹⁴¹

Some jurisdictions have attempted to mitigate chilling effects through various techniques. Many hate speech prohibitions include explicit exemptions for artistic expression, scientific inquiry, fair comment on matters of public interest, or religious teaching.¹⁴² Courts have also developed interpretive approaches to narrow potentially overbroad provisions. In *Whatcott*, the Canadian Supreme Court modified the statutory prohibition by reading in requirements that the expression must be "unusually strong and deep-felt" and "incite hatred" in the sense of "a most extreme emotion that belies reason."¹⁴³

Despite these mitigating strategies, concerns about chilling effects remain central to debates over hate speech regulation. These concerns reflect the fundamental tension between prohibiting harmful expression and preserving the "breathing space" necessary for free

¹³⁸ *Canadian Islamic Congress v. Maclean's Magazine* (2008) CHRT 8.

¹³⁹C Dent, 'Religious Vilification Laws: Quelling Fires of Hatred?' (2004) 31 *Alternative Law Journal* 153.

¹⁴⁰ PEN America, 'Chilling Effects: NSA Surveillance Drives Writers to Self-Censor' (2014).

¹⁴¹R Post, 'Participatory Democracy and Free Speech' (2011) 97 *Virginia Law Review* 477.

¹⁴² Racial and Religious Hatred Act 2006 (UK), s 29J.

¹⁴³ *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11, para 411.

expression to thrive. ¹⁴⁴As Justice Brennan noted in *New York Times v. Sullivan*, "erroneous statement is inevitable in free debate," and the law must protect some false or offensive speech to avoid chilling truthful and valuable expression.¹⁴⁵

4.2.4 The Role of Social Media and Private Platforms in Speech Regulation

Social media platforms have assumed the role of de facto regulators of speech, exercising what amounts to quasi-judicial powers by removing, deplatforming, or demoting content. These platforms often rely on elaborate community guidelines that prohibit hate speech, harassment, misinformation, and other forms of harmful content. However, these guidelines are inconsistently enforced, and their standards are not always transparent. While private companies are not bound by constitutional provisions like state actors are, their actions can have significant implications for the right to freedom of expression.

The Nigerian Constitution, in Section 39(1), guarantees every person the right to freedom of expression, including the freedom to hold opinions and to receive and impart ideas and information without interference¹⁴⁶. However, these protections are traditionally enforceable against state actions, not private companies. The theoretical underpinning of this issue can be found in the debate between formalist and instrumentalist approaches to law. Formalists might argue that since private companies are not state actors, constitutional guarantees of free speech do not apply. Instrumentalists, on the other hand, would argue that because these platforms have assumed functions that impact public rights, they should be held to higher standards of accountability¹⁴⁷.

Internationally, the European Union has taken steps to address the unregulated power of tech giants through instruments like the Digital Services Act (DSA) and the General Data Protection Regulation (GDPR). These frameworks seek to impose obligations on platforms to ensure transparency, accountability, and due process in content moderation decisions.¹⁴⁸

In contrast, the United States follows a more laissez-faire approach, supported by Section 230 of the Communications Decency Act which shields platforms from liability for user-

¹⁴⁴ *New York Times v. Sullivan*, 376 U.S. 254 (1964).

¹⁴⁵ *New York Times v. Sullivan*, 376 U.S. 254, 271 (1964).

¹⁴⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended), s.39(1).

¹⁴⁷ Tushnet, M. (1999). *Taking the Constitution Away from the Courts*. Princeton University Press.

¹⁴⁸ Regulation (EU) 2022/2065 of the European Parliament and of the Council on a Single Market for Digital Services.

generated content while granting them broad powers to remove objectionable material.¹⁴⁹ This has led to debates about whether platforms act as neutral intermediaries or as publishers with editorial responsibilities.

Thus, while social media platforms offer unprecedented opportunities for free expression, they also challenge the legal frameworks that traditionally governed public discourse. The hybrid nature of these platforms—private entities with public functions—requires new legal approaches to ensure a balance between freedom and accountability.

4.3 Hate Speech and National Security in Nigeria

4.3.1 Hate Speech as a Trigger for Violence and Unrest

Hate speech, particularly when disseminated through social media, has been identified as a catalyst for violence and social unrest. In Nigeria, hate speech has played a significant role in exacerbating ethnic and religious tensions. For instance, during election periods, social media is often flooded with messages that demonise opposing candidates or ethnic groups. In fragile democracies, such incendiary speech can quickly translate into real-world violence.

The Rwandan Genocide remains one of the most chilling examples of how hate speech can incite mass violence. Although this occurred before the age of social media, the role played by Radio Télévision Libre des Mille Collines (RTL) demonstrates how propaganda can be weaponised.¹⁵⁰ The emergence of social media has only amplified this threat due to the speed, anonymity, and reach it affords.

In Nigeria, the 2018 National Broadcasting Commission (NBC) Code was amended to include provisions against hate speech. However, the enforcement of such provisions on digital platforms remains problematic due to jurisdictional challenges and the global nature of the internet. The lack of a clear and consistent definition of hate speech further complicates enforcement.

¹⁴⁹ Communications Decency Act, 47 U.S.C. § 230.

¹⁵⁰ Des Forges, A. (1999). *Leave None to Tell the Story: Genocide in Rwanda*. Human Rights Watch.

4.3.2 Justifications for Limiting Speech in Fragile States

International human rights instruments, including Article 19 of the International Covenant on Civil and Political Rights (ICCPR), recognise that freedom of expression is not absolute and may be subject to restrictions for the protection of national security, public order, or the rights of others.¹⁵¹ In fragile states like Nigeria, these justifications are often invoked to curb speech perceived as threatening.

However, these limitations must satisfy a three-part test: they must be provided by law, pursue a legitimate aim, and be necessary and proportionate in a democratic society.¹⁵² In practice, governments often invoke national security to suppress dissent, thereby undermining the essence of democratic governance.

In *Shugaba Darman v. Minister of Internal Affairs*, the Nigerian Court of Appeal struck down the deportation of a Nigerian citizen, recognising the need to safeguard individual rights even in the face of government claims of national interest.¹⁵³ The decision reinforces the principle that any derogation from fundamental rights must be strictly scrutinised.

Moreover, Nigeria's Terrorism (Prevention) Act 2011, amended in 2013, contains provisions that criminalise support for terrorist activities, including dissemination of messages that promote terrorism. While the intention is to safeguard national security, these provisions can potentially be misapplied to target legitimate expression.

4.3.3 Legal Precedents on Hate Speech and Incitement to Violence

The Nigerian courts have not developed a comprehensive jurisprudence on hate speech, but existing cases provide useful guidance. However, the Court also emphasised the need for concrete evidence linking the accused to acts of violence.

In *Arthur Nwankwo v. The State*, the Court of Appeal overturned a conviction for sedition, stating that laws that criminalise criticism of the government are incompatible with democratic principles.¹⁵⁴ This decision remains a cornerstone in Nigerian free speech jurisprudence and sets a high threshold for limiting expression.

¹⁵¹ International Covenant on Civil and Political Rights (1966), Art. 19(3).

¹⁵² UN Human Rights Committee, General Comment No. 34, CCPR/C/GC/34 (2011).

¹⁵³ *Shugaba Darman v. Minister of Internal Affairs* (1981) 3 NCLR 915.

¹⁵⁴ *Arthur Nwankwo v. The State* (1985) 6 NCLR 228.

A notable case is *Osawe v. Registrar of Trade Unions*, where the Supreme Court recognised that freedom of expression extends to the right to associate and form opinions.¹⁵⁵ Another important decision is *Media Rights Agenda v. Attorney-General of the Federation*, where the ECOWAS Court held that Nigeria's failure to provide a legal framework for access to information violated the African Charter.¹⁵⁶ These cases collectively highlight the evolving judicial stance on freedom of expression.

The Cybercrimes (Prohibition, Prevention, etc.) Act, 2015, has also generated litigation. In *Okedara v. Attorney General*, the Federal High Court held that some provisions of the Act were vague and could infringe on free speech.¹⁵⁷ This case underscores the need for precise legislative drafting to avoid chilling effects on legitimate expression.

In *Brandenburg v. Ohio*, the U.S. Supreme Court established the "imminent lawless action" test for incitement.¹⁵⁸ The Court held that speech advocating illegal conduct is protected under the First Amendment unless it is directed to inciting imminent lawless action and is likely to produce such action. This standard has been influential globally, including in debates in Nigeria about what constitutes incitement.

This decision marked a departure from earlier precedents like *Schenck v. United States*, which upheld restrictions on speech under the "clear and present danger" test.¹⁵⁹ The *Brandenburg* test offers a more protective stance on free speech, making it harder for governments to justify limitations.

The European Court of Human Rights (ECtHR) has developed a nuanced jurisprudence on hate speech. In *Erbakan v. Turkey*, the Court held that political speech enjoys a high level of protection but may be limited if it incites hatred.¹⁶⁰ In *Garaudy v. France*, the Court upheld the applicant's conviction for Holocaust denial, affirming that denial of historical facts may constitute hate speech.¹⁶¹

¹⁵⁵ *Osawe v. Registrar of Trade Unions* (1985) 1 NWLR (Pt 4) 755.

¹⁵⁶ *Media Rights Agenda v. Attorney-General of the Federation*, ECW/CCJ/APP/10/06 (2007).

¹⁵⁷ *Okedara v. Attorney General* (2019) FHC/ABJ/CS/690/2016.

¹⁵⁸ *Brandenburg v. Ohio* 395 U.S. 444 (1969).

¹⁵⁹ *Schenck v. United States* 249 U.S. 47 (1919).

¹⁶⁰ *Erbakan v. Turkey* (2006) App no 59405/00 (ECtHR).

¹⁶¹ *Garaudy v. France* (2003) App no 65831/01 (ECtHR).

The ECtHR employs the principle of proportionality to assess restrictions on speech. In *Handyside v. United Kingdom*, the Court famously stated that freedom of expression includes not only information and ideas that are favourably received but also those that "offend, shock or disturb".¹⁶² This principle is crucial in ensuring that the right to free speech is not unduly curtailed under the guise of maintaining public order.

¹⁶² *Handyside v. United Kingdom* (1976) App no 5493/72 (ECtHR).

CHAPTER FIVE

SUMMARY, RECOMMENDATIONS AND CONCLUSION

5.1 Summary of Findings

This research has engaged deeply with the complex and contentious intersection of freedom of expression and hate speech regulation within the context of international human rights law, Nigerian constitutional and statutory frameworks, and comparative legal regimes. The findings reveal multiple layers of tension, ambiguity, and evolving legal interpretations which continue to challenge scholars, courts, policymakers, and civil society alike.

Firstly, the study confirms that *freedom of expression* is a universally recognized and constitutionally enshrined right, as seen in Section 39(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), Article 19 of the Universal Declaration of Human Rights (UDHR), and Article 19 of the International Covenant on Civil and Political Rights (ICCPR). These provisions collectively establish the foundational role that free expression plays in individual autonomy, democratic governance, and the functioning of pluralistic societies. However, the study equally affirms that freedom of expression is *not absolute*, and may be subjected to limitations in pursuit of legitimate objectives such as national security, public order, morality, and the protection of the rights of others.

Secondly, this research establishes that hate speech is a multidimensional concept with no universally accepted legal definition. Jurisdictions interpret hate speech differently, and in many cases, national histories, political cultures, and social realities significantly influence the contours of their legal frameworks. In Nigeria, the legal architecture on hate speech is fragmented across several statutes—including the Cybercrimes (Prohibition, Prevention, etc.) Act 2015, the Nigerian Broadcasting Commission (NBC) Code, the Electoral Act, and the Penal and Criminal Codes. Notably, none of these legal instruments provides a comprehensive definition of hate speech, thereby creating ambiguity, and room for abuse.

Thirdly, the study finds that the *lack of definitional clarity* on hate speech not only hampers enforcement but also poses a substantial risk to freedom of expression. Overbroad and vague legal provisions—such as those found in Section 24 of the Cybercrimes Act—may create a chilling effect, discouraging robust public discourse, investigative journalism, political dissent, or academic critique. Judicial interpretations of these provisions have been

inconsistent, further exacerbating the uncertainty surrounding the limits of permissible speech in Nigeria.

Fourthly, the study recognizes that international human rights instruments such as Article 20 of the ICCPR impose obligations on states to prohibit advocacy of hatred that constitutes incitement to discrimination, hostility, or violence. Yet, the implementation of this obligation varies widely. European states, for example, take a more restrictive stance on hate speech, whereas the United States offers maximalist protection of speech, even when such speech is highly offensive, under the First Amendment—except where it incites *imminent lawless action*, as articulated in *Brandenburg v. Ohio*.

Fifthly, comparative analysis reveals that Nigeria's approach to hate speech regulation lacks coherence. While some statutes aim to punish incitement and offensive content, the enforcement mechanisms are weak, inconsistent, and often politicized. There is little evidence of institutional independence in the regulation of speech, and the capacity of regulatory agencies such as the NBC and the Nigerian Press Council is limited by executive influence, legal uncertainty, and inadequate infrastructure.

Sixthly, the rise of social media and digital communication has radically transformed the terrain of speech. The borderless nature of online expression has amplified the reach and potential impact of hate speech, while also raising new challenges for enforcement. The research observes that digital platforms have emerged as quasi-regulatory actors, moderating speech through opaque policies and algorithms, often without adherence to human rights standards. Yet, Nigerian legal frameworks have not evolved sufficiently to regulate these platforms in a manner that protects both expression and dignity.

Seventhly, the study highlights the importance of contextual and proportional approaches to speech regulation. As the Rabat Plan of Action underscores, any limitation on speech must satisfy a tripartite test: legality, legitimacy of aim, and necessity and proportionality. Nigerian hate speech regulation often fails to meet these standards, particularly in terms of legal precision and proportionality. For instance, proposals to punish hate speech with capital punishment or excessive fines raise serious human rights concerns.

Eighthly, the institutional framework for regulating hate speech in Nigeria—comprising the National Human Rights Commission (NHRC), the judiciary, and media regulatory agencies—is marked by fragmentation, underfunding, and lack of synergy. The NHRC, while

statutorily empowered to investigate violations of human rights, has limited authority to impose sanctions. The judiciary, meanwhile, has been cautious in pronouncing on the constitutionality of hate speech laws, leaving a gap in jurisprudential clarity.

Ninthly, empirical and comparative findings suggest that legal regulation alone is insufficient to curb hate speech. Education, media literacy, civic dialogue, and counterspeech are necessary complements to legal reform. Overreliance on punitive approaches may entrench resentment, further polarize public discourse, and inadvertently create martyrs of individuals who propagate hate.

Finally, the study finds that the path forward must involve legal reform, institutional strengthening, civil society engagement, and a nuanced understanding of the socio-political context in which speech occurs. It is essential to recognize that both *freedom of expression* and *freedom from hate* are indispensable in a democratic society. Achieving a balance between them is not a zero-sum game, but a complex, ongoing negotiation between competing, yet reconcilable, values.

5.2 Recommendations

Drawing from the analysis, findings, and comparative frameworks explored in this study, it is evident that Nigeria's current approach to the regulation of hate speech and the protection of freedom of expression requires urgent recalibration. The recommendations below are designed to support a more just, democratic, and effective regulatory ecosystem—one that both protects vulnerable groups from harmful speech and safeguards the foundational democratic right to free expression.

A. Legal Reform

1. Enact a Comprehensive Definition of Hate Speech

The absence of a uniform legal definition of hate speech across Nigerian laws has created significant ambiguity, paving the way for selective enforcement and human rights abuses in Nigeria. Parliament should enact a statute that clearly defines hate speech in accordance with international standards—particularly the six-part threshold test from the Rabat Plan of Action, which considers the context, speaker, intent, content, extent, and likelihood of harm.

The definition should distinguish hate speech from offensive, unpopular, or critical speech, which remains protected under Section 39(1) of the 1999 Constitution.

2. Repeal or Amend Vague and Overbroad Provisions

Several existing provisions, such as Section 24 of the Cybercrimes Act, are overly broad and risk criminalizing legitimate speech. These sections should either be repealed or amended to ensure compliance with constitutional and international human rights norms. Laws should not punish expression merely because it is offensive or unpopular; rather, only speech that crosses the threshold of incitement to discrimination, hostility, or violence should be subject to criminal sanction.

3. Incorporate Civil and Administrative Sanctions

Criminal law should not be the default regulatory tool for addressing hate speech. Instead, legislation should incorporate graduated, proportionate, and restorative measures, including civil remedies, apologies, public retractions, community service, or educational sanctions. This approach promotes healing and social cohesion, rather than merely retribution.

B. Institutional Strengthening

4. Strengthen the Capacity and Independence of Regulatory Bodies

Institutions such as the National Human Rights Commission (NHRC) and the Nigerian Press Council (NPC) must be adequately funded, insulated from political interference, and empowered to operate with transparency and accountability. Their mandates should be clarified and expanded to include oversight of speech-related violations, education, and engagement with digital platforms.

5. Create a Multi-Stakeholder Speech Regulation Council

A Speech Regulation and Oversight Council should be established, comprising representatives from civil society, the judiciary, the media, academia, minority groups, and digital platforms. This Council would provide advisory opinions, evaluate hate speech complaints, promote dialogue, and develop best practices for online and offline discourse.

6. Enhance Judicial Training and Doctrinal Consistency

Judges, particularly at the lower courts, should receive mandatory and continuous training on freedom of expression, hate speech jurisprudence, digital rights, and proportionality analysis. This will promote doctrinal clarity and ensure consistent judicial interpretation across all levels of the judiciary.

C. Digital and Media Policy Reform

7. Develop a Nigerian Digital Rights and Content Moderation Framework

The government should collaborate with civil society, tech companies, and digital rights experts to develop a Digital Speech Governance Charter. This framework would outline minimum standards for content moderation, appeal processes, algorithmic transparency, and data sharing, all in line with Nigeria's human rights obligations.

8. Mandate Transparency in Social Media Content Moderation

Social media companies operating in Nigeria should be required—via legislation or self-regulation—to publish regular transparency reports, detailing how many speech-related posts were taken down, why, and how users were notified and allowed to appeal. These reports should be monitored by the proposed Speech Regulation Council.

9. Establishment of a Public Digital Literacy Fund

A national digital and media literacy program should be funded and coordinated by the Ministry of Education and the NHRC, aimed at teaching citizens—especially youth—how to distinguish between hate speech and free speech, verify sources, and respond constructively to harmful narratives.

D. Civic Education and Non-Legal Strategies

10. Promote Counterspeech Initiatives

Government and civil society should invest in counterspeech campaigns—using storytelling, art, satire, and dialogue—to confront and counteract hate speech in public discourse. Successful models from Kenya, South Africa, and India have shown that counterspeech can be more effective than censorship in changing attitudes.

11. Integrate Peace and Pluralism Education into School Curricula

Primary, secondary, and tertiary curricula should be revised to include modules on peacebuilding, civic responsibility, inter-religious dialogue, and tolerance. Formal education remains one of the most sustainable ways to prevent future generations from internalizing hate or engaging in divisive rhetoric.

12. Engage Traditional and Religious Institutions

Given their influence on community values and discourse, traditional rulers and religious leaders should be actively engaged as partners in promoting respectful speech and social harmony. The government should provide training, support interfaith dialogues, and recognize grassroots peacebuilding efforts.

E. Electoral and Political Communication

13. Enforce Provisions Against Hate Speech During Elections

The Electoral Act's prohibitions on hate speech during campaigns must be more rigorously enforced by INEC, in partnership with security agencies and civil society. Political parties and candidates should be bound by enforceable codes of conduct, and violations should attract both legal and electoral consequences.

14. Debar Political Figures Who Consistently Engage in Hate Speech

Repeat offenders—especially public office holders—who engage in incitement or discriminatory rhetoric should face professional, political, and legal sanctions, including debarment from holding or contesting public office. This will help set a higher standard for public discourse.

F. Research and Data-Driven Policymaking

15. Fund Independent Hate Speech Monitoring and Research

The government, in collaboration with international partners and Nigerian universities, should fund independent, empirical studies on the prevalence, patterns, and impact of hate

speech. These findings will support evidence-based policymaking and allow for adaptive regulation as speech dynamics evolve.

These recommendations require not just legislative or policy action, but a deep cultural transformation—one rooted in respect, empathy, and the collective commitment to building a democratic society that values both free expression and human dignity. The implementation of these measures must be accompanied by political will, civic engagement, and ongoing evaluation. Freedom of expression and protection from hate are not competing values—they are co-dependent principles that, when upheld together, form the bedrock of a just and inclusive society.

5.3 Contributions to Knowledge

This research makes several novel and substantive contributions to legal scholarship, policy development, and human rights advocacy concerning the intersection of freedom of expression and hate speech regulation in Nigeria. These contributions not only fill important gaps in the existing literature but also offer practical frameworks for legal reform, judicial interpretation, and institutional response. The following key areas underscore the scholarly value and original contributions of this study:

1. Synthesis of Dispersed Legal Instruments into a Cohesive Framework

One of the principal contributions of this research is its consolidation and critical analysis of the diverse and fragmented legal provisions governing hate speech and freedom of expression in Nigeria. Prior literature often examines these laws in isolation—such as the Cybercrimes Act, the Penal Code, or the Broadcasting Code—without establishing an integrated legal architecture. This work unifies these components under a common analytical lens, thereby providing a comprehensive understanding of how these laws interact, overlap, and sometimes conflict. This synthesis allows policymakers and scholars to identify the inconsistencies, overlaps, and contradictions within the current framework and to propose harmonization for coherence and legal certainty.

2. Contextualization of International Norms within Nigerian Realities

Another important contribution lies in the localization of international human rights norms. By examining instruments such as the UDHR, ICCPR, and the Rabat Plan of Action in the context of Nigeria's legal and political culture, the study demonstrates the extent to which global standards are either domesticated or ignored in practice. While much scholarship simply lists these instruments as normative ideals, this research critically interrogates Nigeria's compliance—or lack thereof—with its treaty obligations, especially regarding the prohibition of hate speech and the permissible limitations on speech. The comparative analysis makes it possible to evaluate Nigeria's performance against international best practices.

3. Theoretical Bridging of Competing Rights: Liberty vs. Dignity

The study advances scholarly discourse by articulating a theoretical bridge between liberty-based and dignity-based approaches to speech regulation. Traditional legal philosophy often pits freedom of expression (a liberty claim) against protection from hate speech (a dignity claim), portraying them as oppositional. Drawing on John Stuart Mill's Harm Principle, Habermas' discourse theory, and elements of legal paternalism, this research conceptualizes a framework that recognizes *both* liberty and dignity as essential to democratic life. The work moves beyond simplistic dichotomies to propose a dialectical model in which these values inform and reinforce each other, rather than cancel each other out.

4. Legal and Institutional Diagnostic of Speech Regulation in Nigeria

This work contributes significantly to institutional analysis by evaluating the operational effectiveness of key regulatory and adjudicatory bodies such as the National Human Rights Commission, the Nigerian Press Council, the Judiciary, and the Nigerian Broadcasting Commission. The study reveals institutional deficits—such as underfunding, politicization, legal uncertainty, and fragmentation—that undermine the effective and fair regulation of speech. By offering a systematic critique of these institutions, this research equips reformers with diagnostic tools to improve both structure and practice in these bodies.

5. Interrogation of the Digital Terrain in Nigerian Speech Law

One of the most forward-looking contributions of this research is its critical engagement with the digital public sphere. As speech increasingly migrates to social media and other online platforms, legal scholars and courts are only beginning to address the unique challenges posed by algorithmic amplification, virality, anonymity, and content moderation by private companies. This study not only identifies these emergent issues but also critiques the inadequacy of Nigeria's current legal regime in addressing them. In so doing, it sets the stage for the development of digital rights jurisprudence that is responsive to the realities of twenty-first-century communication.

6. Comparative Analysis with Other Jurisdictions

The comparative legal framework presented in this research provides rich insight into how different democracies approach hate speech regulation. From the United States' near-absolute protection of speech to Europe's proportional limitations, and South Africa's post-apartheid human dignity model, the study offers a spectrum of legal approaches that inform and challenge Nigeria's evolving jurisprudence. This comparative lens is not only academically enriching but also practically valuable for legal reformers, offering tested models for adoption or adaptation.

7. Bridging the Gap Between Legal Theory and Practical Policy

In contrast to overly theoretical works that fail to address implementational challenges, or practical reports that lack conceptual depth, this study strikes a balance by offering actionable recommendations rooted in sound legal theory. The research includes a detailed review of the dangers of overcriminalization, the need for civic education, the importance of judicial training, and the potential for non-punitive measures such as community dialogue and counterspeech. It thus contributes to both the *theory* and *practice* of speech regulation.

8. Addressing an Understudied African Context in Global Discourse

Finally, the study makes a significant contribution by bringing Nigerian and African perspectives into a largely Euro-American dominated scholarly field. Global discourse on hate speech regulation has often neglected the unique challenges and opportunities found in

post-colonial, multi-ethnic, and developing societies such as Nigeria. This research not only centers these experiences but draws on them to enrich international legal debates, thereby decolonizing and diversifying the knowledge production around free speech and hate speech law.

With these contributions, the study stands as a valuable addition to academic literature, policy development, and institutional reform efforts. It provides a unique, grounded, and forward-thinking framework for understanding and navigating the enduring dilemma of free speech and hate speech in Nigeria and beyond.

5.4 Areas for Further Research

Despite the comprehensive analysis provided in this study, several areas remain underexplored, indicating fertile ground for future academic inquiry and policy development. As the landscape of speech regulation continues to evolve—both in Nigeria and globally—scholars, practitioners, and institutions must continually interrogate emerging challenges, legal innovations, and normative tensions. This section outlines key areas where further research would deepen understanding, close theoretical gaps, and strengthen the effectiveness of speech regulation frameworks.

1. Empirical Assessment of Hate Speech Prosecution and Enforcement in Nigeria

Although this research has examined the legal framework and institutional architecture for hate speech regulation in Nigeria, a quantitative and qualitative analysis of actual prosecutions, administrative sanctions, and enforcement patterns is still lacking in Nigerian legal scholarship. Empirical studies tracking how many hate speech-related cases have been prosecuted, what legal provisions were invoked, the demographic profiles of accused persons, conviction rates, and judicial reasoning would provide valuable data for evaluating the fairness, selectivity, and effectiveness of Nigeria's current approach. This research would help answer questions such as: Is hate speech law disproportionately applied to dissenters or minority voices? Are certain regions or institutions more active in enforcement than others?

2. The Role of Traditional and Religious Institutions in Mitigating Hate Speech

Nigeria is a deeply religious and culturally diverse country, where traditional rulers, clerics, and religious bodies hold considerable influence over public discourse and moral norms. However, very little research exists on how these informal institutions might complement legal mechanisms in curbing hate speech. Further studies could investigate how traditional councils or religious leaders can serve as mediators in conflicts arising from offensive speech, or how they might be co-opted into formal systems of speech regulation through advisory or monitoring roles. This line of inquiry also raises important questions about plural legal systems and the intersection of state and customary authority.

3. Algorithmic Governance and Artificial Intelligence in Online Speech Regulation

As social media platforms increasingly rely on artificial intelligence (AI) to detect, remove, or demote hateful content, there is a pressing need for interdisciplinary research into the legal and ethical dimensions of algorithmic governance. How effective are these AI tools in distinguishing hate speech from satire, political dissent, or religious criticism? Do such technologies inadvertently replicate or exacerbate existing biases? To what extent are Nigerian users subject to algorithmic censorship developed in Silicon Valley or other foreign jurisdictions? Future research should explore how Nigerian law can ensure transparency, accountability, and fairness in algorithmic content moderation—particularly as digital rights become ever more central to democratic life.

4. Speech Regulation in Multilingual and Multicultural Societies

Nigeria's linguistic and ethnic diversity presents unique challenges in identifying and regulating hate speech. Words or phrases considered benign in one language may carry harmful connotations in another. Similarly, satire or idiomatic expressions may be misconstrued across cultural lines. Further research is needed to explore how language, culture, and social identity affect the perception and impact of hate speech. Legal scholars might collaborate with sociolinguists and anthropologists to develop context-sensitive tests for determining the harm or intent of certain expressions. This would also enrich jurisprudence by grounding it in local cultural realities rather than universalistic legal abstractions.

5. Intersectionality and the Impact of Hate Speech on Marginalized Communities

Current legal literature often treats hate speech as a general phenomenon, without disaggregating its impact across different intersectional identities such as gender, religion, sexual orientation, and disability. Future research should explore how hate speech disproportionately affects women, sexual minorities, ethnic minorities, and persons with disabilities in Nigeria. For instance, what is the effect of online misogyny or anti-LGBTQ rhetoric on civic participation, mental health, or access to justice? Such studies would help develop targeted legal and policy responses, grounded in a nuanced understanding of vulnerability and power dynamics.

6. Comparative Study of Restorative Justice Approaches to Hate Speech

Most existing hate speech laws adopt a retributive justice model—criminalizing and punishing offenders through fines, imprisonment, or public sanctions. However, some scholars advocate for restorative justice approaches, including dialogue circles, community service, public apologies, or re-education. These models aim to repair harm and reintegrate offenders into the community rather than simply punish them. Comparative studies could evaluate the success of restorative models in jurisdictions such as New Zealand or Canada and explore how these mechanisms could be adapted to the Nigerian context, especially in communal or inter-ethnic conflicts.

7. Hate Speech, Disinformation, and Electoral Integrity

The convergence of hate speech and disinformation, particularly during electoral periods, poses a significant threat to democratic stability. While this research has touched on this issue in brief, a more focused study is necessary to understand the strategic deployment of hate speech to manipulate elections, suppress voter turnout, or delegitimize opponents. Future research could assess the role of political actors, social media influencers, and foreign agents in spreading divisive narratives, and evaluate how electoral laws, campaign regulations, and digital monitoring systems can address these threats without infringing on legitimate political speech.

8. Impact of Judicial Training and Interpretation on Hate Speech Jurisprudence

Inconsistent judicial interpretation remains a major barrier to the development of a coherent hate speech doctrine in Nigeria. Further research could explore the curriculum and frequency of judicial training on speech-related rights, assess knowledge gaps among magistrates and judges, and propose model judicial guidelines. Longitudinal studies could also trace how Nigerian courts' attitudes towards hate speech have evolved over time, influenced by political contexts, public opinion, or international human rights trends.

9. Children, Adolescents, and Exposure to Hate Speech

There is limited research on the psychosocial and developmental impact of hate speech on minors, particularly in school environments and online spaces. How does repeated exposure to ethnic, gender-based, or religious slurs affect children's worldview, social behavior, or academic performance? What protections do Nigeria's educational and child protection laws offer in this regard? Answering these questions would expand the scope of speech regulation to include child rights, psychology, and education policy.

10. The Role of Counterspeech and Media Literacy in Combating Hate

Finally, future research should explore the effectiveness of non-legal strategies, particularly counterspeech initiatives, in responding to hate speech. Can humor, storytelling, and positive messaging reduce the impact of hateful narratives? How can media literacy programs in schools or communities equip people with the tools to critically evaluate and counter toxic content? Evaluating and systematizing these approaches would diversify the toolkits available to governments, NGOs, and educators in mitigating hate without resorting solely to punitive measures.

By pursuing these and related lines of inquiry, future researchers can build upon the foundation laid by this study to deepen our collective understanding and response to the complex challenges posed by hate speech in an increasingly connected and contested world.

5.5 Conclusion

The complex tension between freedom of expression and the regulation of hate speech remains one of the most enduring and significant dilemmas in modern democratic and constitutional theory. This study set out to interrogate this tension within the context of Nigerian law, supported by international legal frameworks and comparative jurisprudence. The analysis has made it evident that while freedom of expression is a cornerstone of democracy, it cannot be exercised in a vacuum devoid of responsibility, social context, or ethical consideration. Equally, the imperative to curb hate speech—which threatens public order, dignity, and human security—must not become a convenient tool for authoritarian censorship or the silencing of legitimate dissent.

This conclusion synthesizes the major themes, insights, and normative principles explored across the five chapters of this research. In doing so, it affirms the central thesis that a *delicate but principled balance* must be struck between protecting the expressive liberties of individuals and ensuring that such liberties are not used to harm, marginalize, or dehumanize others.

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