

Freedom of expression or “hate speech”?

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OVERVIEW

1. Contemporary debates
2. Defining “hate speech”
3. FoE and “hate speech”: tensions
4. Duty to prohibit “incitement”
5. Promotion of intercultural understanding: media

1. CONTEMPORARY DEBATES

- Multiculturalism: a fact, a policy goal
- Rise in far-right in Europe
- Controversies over state, religion and immigration
- “Hate speech” making every day news
- Need for constructive public conversation

2. DEFINING “HATE SPEECH”

- A definition?

“All forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility towards minorities, migrants and people of immigrant origin”

Committee of Ministers Recommendation, 30 October 1997

- No universal definition in IL

- Given lack of clarity, important to distinguish:

- Legitimate expression of views, especially by journalists and politicians (including those that “offend, shock or disturb”) &
- Genuine incitement

3. FOE & “HATE SPEECH”: TENSIONS

- “Hate speech” – a harm to human rights
 - *as an abuse of FoE* which carries “special duties and responsibilities”
 - *undermining other interrelated rights*, notably equality and democratic values
- But restrictions on FoE permissible only if
 - provided by law
 - genuinely to pursue a legitimate aim (eg right equality)
 - necessary in a democratic society (pressing social need)

Article 19 International Covenant on Civil and Political Rights

Article 10 European Convention on Human Rights

Q: Is media *reporting* of “hate speech” hate speech? Can it be permissibly restricted?

- *Jersild v Denmark* (ECtHR, 1993):
 - Media can report on activities of racists, but must take care to maintain distance, ensure does not suggest endorsement of racist’s views
 - Factors into consideration
 - Unique function of press as watchdog, impart ideas of public interest
 - News reporting including interviews one of most important means to achieve this
 - Punishment of journalist would seriously hamper contribution of press to discussion of matters of public interview

4. DUTY TO PROHIBIT “INCITEMENT”

- Duty on states to prohibit:

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

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

- Uncertain scope: OHCHR seminars on Article 20(2) ICCPR
- *Camden Principles on Freedom of Expression and Equality* (P12)
 - Hostility = intense/irrational emotions of opprobrium, enmity and detestation towards the target group
 - Advocacy = an intention to promote hatred publicly towards target group
 - Incitement = statements about national, racial or religious groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups
 - Promotion of a positive sense of group identity does not constitute “hate speech”

5. PROMOTION OF INTERCULTURAL UNDERSTANDING: MEDIA ROLE

- *Camden Principles on Freedom of Expression and Equality*
- 6.1: All mass media should, as a **moral and social responsibility**, take steps to:
 - i. Ensure that their workforces are **diverse and representative of society as a whole**
 - ii. Address as far as possible **issues of concern to all groups** in society
 - iii. Seek a **multiplicity of sources and voices within different communities**, rather than representing communities as monolithic blocs
 - iv. Adhere to high standards of information provision that meet recognised **professional and ethical standards**

- 9.1: All media should, as a moral and social responsibility, **play a role in combating discrimination and in promoting intercultural understanding**, including by considering the following:
 - i. Taking care to **report in context and in a factual and sensitive manner**, while ensuring that acts of discrimination are brought to the attention of the public.
 - ii. Being alert to the **danger of discrimination or negative stereotypes of individuals and groups** being furthered by the media.
 - iii. Avoiding **unnecessary references to race, religion, gender and other**
 - iv. Raising **awareness of the harm** caused by discrimination and negative stereotyping. group characteristics that may promote intolerance.
 - v. Reporting on different groups or communities and **giving their members an opportunity to speak and to be heard** in a way that promotes a better understanding of them, while at the same time reflecting the perspectives of those groups or communities.

9.2. Public service broadcasters should be under an obligation to **avoid negative stereotypes of individuals and groups, and their mandate should require them to promote intercultural understanding** and to foster a better understanding of different communities and the issues they face. This should include the airing of programmes which portray different communities as equal members of society.

9.3. **Professional codes of conduct** for the media and journalists should reflect equality principles and effective steps should be taken to promulgate and implement such codes.

9.4. **Professional development programmes** for media professionals should raise awareness about the role the media can play in promoting equality and the need to avoid negative stereotypes.

The journalist shall be aware of the danger of discrimination being furthered by the media and shall do the utmost to avoid facilitating such discrimination based on, among other things, race, sex, sexual orientation, language, religion, political or other opinions, and national or social origins

Code of Principles of IFJ (1986)

CONCLUDING REMARKS

“Cultural diversity should not be viewed as a brute fact to be reluctantly accepted and accommodated but as a *positive* value to be cherished and fostered.”

Bhikhu Parekh

“To meet ethical aspirations journalists must be aware that ignorance and a lack of appreciation of different cultures, traditions and beliefs within the media leads to stereotypes which reinforce racist attitudes. They must be conscious of the impact of the words and images given the deeply-rooted fears and anxieties of different communities that exist within society.”

Aidan White, former Secretary General IFJ

Thank you

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