

HATE SPEECH UNDER INTERNATIONAL AND NATIONAL LAWS: A COMPARATIVE ANALYSIS FROM ISLAMIC LAW PERSPECTIVE

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***ABSTRACT**--Hate speech and expression is considered as one of the burning issues of the current socio-political world. The approaches of international and national laws are generally different from Islamic law in the subject. The formal laws commonly provide infinite freedom while Islamic law wants some limits up on it. In other words, international and national laws represent unbounded freedom of speech with nominal legal restrictions whereas Islamic concept of freedom of expression has various moral and legal bindings based on divine ethics to protect freedom of expression and individual rights and not to curb the acts of civil and religious defamation. Hence, the legal constraints in international and national laws are insufficient because they legalize unlimited freedom of speech and their legal restrictions are also either partial or nonexistent. This article is a comparative desiccation which examines international, national and Islamic laws to protect people from hate speech and expression. The study follows qualitative approach to discuss the issues and analyses data. Basically, secondary resources are used in this paper, thus information has been taken from articles, book, newspapers, case laws and status. This study finds that the freedom of speech and expression is a fundamental human right which must be achieved through certain essential objectives like disclosure of truth and the honour of human beings.*

***Keywords**-- Hate speech; Socio-political; World; International law; National law; Islamic law*

I. INTRODUCTION

Freedom of expression is a significant human right recognized by the major international human right instruments, national laws or the constitutions as well as Islamic law (Islam, 2013). It is one of the fundamental elements of a society where people enjoys the opportunity to express their valuable opinion with regard to a social, political, religious, economic and other crucial matters that attract the mind of the people of a particular society. This right enables the free exchange of ideas, opinions and information and thus allows members of society to form their own opinions on issues of public importance. Freedom of expression serves public debate and supports a free and independent press, informed citizenship and the transparent functioning of the state. Nevertheless, the term contains wide range of means and ways to express opinion, thus the dimension of freedom of expression is remained undefined rather than left to the time and context of the society to define freedom of expression to meet the necessity of the society. In contrast, freedom of expression has not been distinguished between good expression

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and bad or hate expression. Hence, the question come on which one expression would be exercised freely? or can anyone exercise good expression and or hate expression at the same time? Thus, due to ambiguity of the term “freedom of Expression” as well as its interpretation for the exact meaning for which it was incorporated, several statements and activities in different forms published at time which disgraces the dignity of the religion or religious leaders and symbols.

On the other hand, Islam authorizes freedom of expression to every individual in a society. The *Al Quran* and *Sunnah* of the Prophet (pubh) obligate freedom of expression in line with the principle of *Shariah*. The freedom of expression is restricted in both Islamic law as well as international human rights laws. Governments of the countries impose restriction on it’s for showing ambiguous context of national security and peace. In addition, some time national authorities penalized persons or groups for their distinct opinion and therefore, persecuted and force to flee to other jurisdiction. However, the objectives of restriction on freedom of expression are distinct in Islamic law in comparison with International human right laws. Right to freedom of speech or freedom of expression is the most complicated right observing by the people throughout the world. However, the context of emergence of the right is different to the Islamic law for freedom of speech or expression. In this paper, researcher examines the scope of freedom of hate speech under national, international and Islamic laws and their consequences i.e. legal liabilities and remedies for hate speech in a comparative perspective.

II. HATE SPEECH UNDER INTERNATIONAL LAW

Since the adoption of the Universal Declaration of Human Rights (UDHR), the international community has made certain progress in combating discrimination on grounds of race, racism, xenophobia and other such intolerance. Both national and international legislation have been implemented as well as international conventions prohibiting discrimination (Islam, 2013). Several international conventions include provisions on protection of privacy and honour and prohibition of discrimination. Not all of them have provisions against hate speech but restrictions to freedom of expression were discussed by member states under their drafting process. The UN realises that prejudice and discrimination are a part of everyday life for many people all over the world and have therefore been seeking new methods and alternatives to combat this. The UN divided their battle against racism and discrimination into a threedecade period, from 1973 until 2003 and have held three global conferences on these issues. In this section researcher discusses the UN Conventions as well as European legislation regarding discrimination and hate speech.

2.1 *The Universal Declaration of Human Rights 1948*

The Universal Declaration of Human Rights is considered to be the foundation for all international human rights law even if is not legally binding, contrary to international human rights conventions. It sets out core principles on human rights which enjoy international acclaim. It attempted to find the right balance between the rights to equal treatment and freedom of expression. On the one hand, the UDHR contains the values of fundamental importance and recognizes the rights to equal protection under the law (Gelashvili, 2018). Article 2 states that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property,

birth or other status. Article 7 also states that; “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Freedom of opinion and expression is protected by Article 19. Article 29, Paragraph 3 and Article 30, contain provisions which emphasize that the rights and freedoms put forward in the Declaration may never be exercised contrary to the purposes and principles of the United Nations and also that nothing in the Declaration may be interpreted as giving a State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth therein (Pálmadóttir, J., & Kalenikova, 2018).

2.2 Convention on the Elimination of All Forms of Racial Discrimination (CERD) 1965

This convention defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” Article 4 contains provisions on racism and freedom of expression and is the most important stipulation as regards hate speech: States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia: (a) Shall declare an offence punishable by law 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, and also the provision of any assistance to racist activities, including the financing thereof; (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law; (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

Article 4 not only obliges member states to render certain conduct punishable, but also obliges them to ensure the implementation of these stipulations and effective remedies for those discriminated against. The CERD Committee has highlighted the involvement of private actors in discrimination and focused on whether or not member states have passed legislation and ensured measures rendering private actors liable. The Committee has put special focus on individual’s right to compensation or other restitution for acts based on racial discrimination, especially regarding hate speech and derogatory speech. The Committee recently issued General recommendation No. 35, on combating racist hate speech, emphasizing that member states honour their obligations under CERD, in particular as regards Articles 4, 5 and 7. The recommendation also states that the relationship between proscription of racist hate speech and the flourishing of freedom of expression should be seen as complementary and not the expression of a zero sum game where the priority given to one necessitates the diminution of the other.

2.3 International Convention on Civil and Political Rights (ICCPR)

Article 19 of the International Convention on Civil and Political Rights (ICCPR) protects freedom of expression but Paragraph 3 states that the exercise of the rights provided for in Paragraph 2 of article 19 carries with it special duties and responsibilities and may therefore be subject to certain restrictions, but these shall only be such as 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. ICCPR article 20, Paragraph 2 states that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. CERD article 4 takes it a step further since it renders such behaviour punishable (Islam, 2013).

2.4 The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) 1979

The 1979 Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) does not explicitly require prohibitions on “hate speech” against women, however, imposes obligation on states to combat discrimination to eliminate prejudices and all other practices “which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women” (Art. 5, CEDAW 1979). Nevertheless, the provision is vague and leaves the actions that might cause the consequences of discrimination to an interpretation. The abovementioned treaties, as illustrated, adopt different terms regarding the state's obligations in relation to combating hateful expression. These treaties do not provide exhaustive characteristics of speech that should be prohibited. Therefore, the limitations on freedom of speech can be defined by analyzing different treaties. Some of these terms are rather permissive while others limit the discretion of a state and impose direct obligations to restrict speech.

III. HATE SPEECH UNDER NATIONAL LAW

Hate speech represent a threat and damage to the life of individuals, and increase the sense of fear in entire communities. Therefore, countries of different region adopt freedom of expression in the constitutions with several conditions. At the same time countries have legislated special laws to protect the victims and prevent hate speech within their respective jurisdictions. In this section researcher finds the freedom of expression and hate speech prevention under national laws of different jurisdictions throughout the world. Most of the countries put restrictions on freedom of expression which mainly related to the political and national security. Very few among the legislation provide scope for prosecution against hate speech. Those countries provide scope they also pay less attention with regard to the issue. Therefore, freedom of speech is everywhere suppressed and hate speech has not provided adequate punishments.

In South Africa, Article 9, 10 and 16 of the Constitution of South Africa ensure the inherent dignity and respect, equality before the law and provide equal protection under the law. It also impose restriction on the State nor any person may, directly or indirectly, discriminate unfairly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth, and that national legislation must be enacted to prevent or prohibit unfair discrimination. Article 16 excludes certain acts from the notion of freedom of expression such as propaganda for war, incitement of imminent violence; or advocacy of hatred that is based on race, ethnicity, gender

or religion, and that constitutes incitement to cause harm. In addition, the country legislated an special Act titled the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), prohibits unfair discrimination, hate speech and harassment and requires the State to promote the constitutional imperatives enshrined in Article 9 of the Constitution. Furthermore, it passed a Bill on hate crime and hate speech in 2018 known as Prevention and Combating of Hate Crimes and Hate Speech Bill, 2018. In this bill Article 4 define hate speech in detail.

The European Convention on Human Rights (ECHR), signed on 4 November 1950, guarantees a broad range of human rights to inhabitants of member countries of the Council of Europe, which includes almost all European nations. Here we mention some of the legislations of the European countries which addressed the freedom of expression and hate speech. For instance, Freedom of speech in the Czech Republic is guaranteed by the Czech Charter of Fundamental Rights and Basic Freedoms, 1991 which has the same legal standing as the Czech Constitution 1992. Specific limitations of the freedom of speech within the meaning of Article 17(4) may be found in the Criminal Code and other laws of the country. Freedom of speech in Denmark is granted by the the Constitutional Act of the Kingdom of Denmark 1953 and hate speech is prohibited under section 266 (b) of The Danish Penal Code, 1930. Section 12 of the Constitution of Finland ensured freedom of expression and right of access to information in Finland. In Finland Blasphemy and hate speech are forbidden. The blasphemy law applies to all religions. The hate speech law protects people of different sexual orientations, races, skin colors, places of birth, national or ethnic origins, religions or beliefs and disabled people. In French, article 11 of The Declaration of the Rights of Man and of the Citizen 1789 which has a constitutional value in French. In addition, France adheres to the European Convention on Human Rights and accepts the jurisdiction of the European Court of Human Rights. The Press Law of 1881, as amended, guarantees freedom of the press, subject to several exceptions.

Freedom of expression is granted by Article 5 of the Basic Law for the Federal Republic of Germany, which also states that there is no censorship and that freedom of expression may be limited by law. The article 14 of the Greek Constitution 1975 guarantees the freedom of speech, of expression and of the press for all but with certain restrictions or exceptions. Articles 6, 7, 9 and 10 of the Fundamental Law of Hungary 2012 establishes the rights of freedom of expression, speech, press, thought, conscience, religion, artistic creation, scientific research, and assembly. Some of these rights are limited by the penal code 1978. Freedom of speech is protected by Article 40.6.1 of the Irish constitution 1937. Furthermore, the constitution explicitly requires that the publication of “seditious or indecent matter” be a criminal offence. This leads to the government for passing blasphemy legislation on 8 July 2009. In Italy, the Constitution of Italy 1947 guarantees the freedom of speech in Article 21. Article 7 of the Dutch Constitution 1815, and The Dutch Criminal Code in section 137(c) prohibits the hate speech. Article 37 of the Portuguese Constitution prohibits censorship of opinion and information. Article 578 of the Penal Code of Spain prohibits the “Glorification or justification, by any means of public expression or dissemination. Freedom of speech is regulated in three parts of the Constitution of Sweden 1719.

Several Asian countries provide formal legal guarantees of freedom of speech to their citizens. These are not, however, implemented in practice in some countries. Barriers to freedom of speech are common and vary drastically between Asian countries. Article 19 of the Indian Constitution guarantees freedom of speech to every citizen, but it allows significant restrictions. These rights are limited so as not to affect; the integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, contempt of court,

defamation or incitement to an offence. Article 39 of the Bangladesh Constitution 1972 ostensibly guarantees freedom of speech to every citizen according to PART III of the Laws in Bangladesh. Presidential Decree No. 1/PNPS/1965 on the Prevention of Blasphemy and Abuse of Religions.

Article 1 of the decree prohibits the “deviant interpretation” of religious teachings, and mandates the President to dissolve any organization practicing deviant teachings. Blasphemy against Islam is illegal in Iran. Freedom of speech is guaranteed by Chapter III, Article 21 of the Japanese constitution 1946. Articles 19 of the Constitution of Pakistan 1973 guarantees freedom of speech and expression, and freedom of the press with certain restrictions. Blasphemy against religion is illegal in Pakistan. Article 35 of the Constitution of the People's Republic of China, 1982. Article III Section 4 of the 1987 Constitution of the Philippines specifies that no law shall be passed abridging the freedom of speech or of expression. However, some laws limit this freedom. Blasphemy against Islam is illegal in Saudi Arabia, under punishment of death. The South Korean constitution guarantees freedom of speech, press, petition and assembly for its nationals. However, behaviors or speeches in favor of the North Korean regime or communism can be punished by the National Security Law 1948. Freedom of expression is preserved in section 14 of the New Zealand Bill of Rights Act 1990. Australia does not have explicit freedom of speech in any constitutional or statutory declaration of rights, with the exception of political speech which is protected from criminal prosecution at common law *per Australian Capital Television Pty Ltd v Commonwealth* 1992. There is however an implied freedom of speech that was recognized in *Lange v Australian Broadcasting Corporation* 1997 case in Australia.

IV. HATE SPEECH IN ISLAM

Freedom of expression is a reoccurring theme in most constitutions of states as the essential ingredient in the free democratic basic order and in several international agreements that classify the freedom of expression as a basic human right. Although Traditional Islamic law has not provided over the past centuries a precise definition of the term 'freedom of expression' in the form of modern definitions, many texts of the primary and secondary sources of Islamic law supported the right of freedom of expression and clarify scopes, objectives and limitations of the freedom of expression (Alzahrani, 2017). Moreover, the Islamic concept of freedom of expression is not limited to the concept of a fundamental human right, but, in some cases, it is a mandatory duty of every Muslim. Thus, Traditional Islamic law has granted, through Islam, fourteen hundred years ago, the right of freedom of expression (Islam, M. Z., & Jahan, 2015).

The Council of the International Islamic Fiqh Academy defines freedom of expression as: “the full enjoyment of a person with the ability to express what he sees rightly and beneficial to him and the community with regard to private affairs or public issues. This right is safeguarded under the provisions of Sharia law” (Kamali, 1997). It is clear that the definition of the Fiqh Academy is ambiguous especially with regard to the question what is “the provisions of Sharia law” that this freedom should be subject to. Dr. Abdul Hakeem Hassan Al-Eili refers that “The Freedom of expression means to be a free man in the formation of his opinion without depending on others and being free to show his opinion and announcement in a manner that he deems” (Kamali, 1997). This definition does not clarify whether freedom of expression is limited or not. Moreover, Ali Muhammad Bhat sees that: “Freedom of speech means the right of an individual to prefer the stance about certain public or private matter and

express them before others devoid of delinking themselves from the society. Freedom of speech and expression is the person's right to express his ideas and feelings with his own choice and will, as long as there is no aggression on the rights of others... It is a prerequisite for a Muslim under certain legal conditions, so that a person can express freely his thought and religious duty" (Jallow, 2015).

This definition restricts the freedom of expression when it violates the rights of others. Although this definition is more obvious, but the issue of the restrictions contained with the words "certain legal conditions" are still vague. Thus, to find out the restrictions on freedom of expression, the relevant texts of traditional Islamic law must be deeply addresses in this section. For clear understanding about the concept of freedom of expression from Traditional Islamic perspective, it is appropriate to understand the three different forms of opinions. First one is praiseworthy. This relies on studying the Quran, Sunnah, and views of Prophet Muhammad's companions which lead, after the consultation to expressing one's opinion. Another one is blameworthy, because it seeks to express one's opinion in violation of certain laws intentionally and dishonor Allah and the Prophet Muhammad. The third category is causing doubt; this aims to create doubt in the primary sources of the Sharia, which are the Quran and the Sunnah, and that contributes to social disturbance and threatens the Supreme Islamic interests with the aim of creating dissent among the people (Bhat, 2014).

Taking the above theme in mind we should define and structure of the hate speech for consideration. However, the absence of a clear definition of hate speech in the legislation of Muslim countries, even the United Arab Emirates, which pioneered the enactment of a special law for hate speech, and of modern Islamic organizations such as Al-Azhar Al-Sharif and the Saudi Council of Senior Scholars, makes it one of the most complex issues to deal with. Therefore, conflicts and disagreement will continue. At the same time, many researchers, legal experts, and those interested in the Muslim world, have not defined hate speech through the perspective of Islamic law, but rather have followed the same approach of this legislation in criminalizing forms of hate speech and trying to find solutions in order to prevent it. However, it is hard to find solutions for hate speech while it is still not precisely defined by traditional Islamic law. Developing a definition for hate speech is important because it can serve as a legal premise upon which judgments can be based in court (Alzahrani, 2017). This section aims to examine the interaction between freedoms and limitations with regard to freedom of expression and hate speech. It is difficult to define the position of traditional Islamic law if addressed through discourses of some Muslim groups; doctrines or countries. This is due to the fact that most of them violate the rules of Islamic law relating to Islamic discourse. Islamic law is the only source that must regulate the provisions of Islamic discourse.

From the perspective of International and regional law, hate speech is issued by different people and in different forms in different contexts. There five elements of hate speech from a traditional Islamic perspective are form, promoter, content, context, and potential impact of speech. The researcher in this place discusses the concept of hate speech to identify the constraints on freedom of expression and to identify incitement to hating. International law indicated the form of expression does not confine to the form of the direct speech, but includes all acts that constitute incitement to discrimination, hostility or violence, such as promoting, supporting, publishing, distributing, or establishing organizations, and participating in such organizations or activities.

Under traditional Islamic law, the form of speech is divided into two types namely, "sayings, and acts". First, the form of sayings covers any expression that comes in direct speech, statements, declarations, advertisements,

rumors, chants, articles, books, messages, publications, audio material, fatwas, e-mail messages, promotion of materials, cartoons, or in any of the forms of modern expression (Burke, M. T., Chauvin, J. C., & Miranti, n.d.). This is understood from the general thrust of Quranic texts, such as: “speak fairly to the people” (The Quran, verse 2:83), and “shun the word that is false”

(The Quran, verse 22:30). With the words “speak” and “the word” in these verses, it is clear that Islamic law does not confine to the form of the direct speech, but include any form of words. Second, the form of acts includes any action that supports hate speech, whether in the form of public support, justification, publishing, helping to spread hate speech, such as creating the suitable atmosphere for promoting this speech through holding or participating in meetings or conferences that use hate speech, or by providing financial support to it, sponsoring it, or protecting it (Kamal, M., & Arifin, 2019). This concept includes all the procedures and facilities that publicly or secretly support this speech.

As regards the promoter hate speech, traditional Islamic law does not differentiate between the individual and the group in the penalty due (Kamal, M., & Arifin, 2019). The whole group will be punished if they committed a crime against a single person (Alam, 2017). Accordingly, the promoter of the speech is any individual or group by any means, including, traditional direct speech, through the media such as “newspapers, television, magazines, or radio,” or through the internet, “web sites or social networking sites,” or through any traditional or modern method. In addition, the promoter of the speech, whether individuals or groups do not necessarily have to have an audience whom they can influence, such as political parties or organizations, or prominent members of them, and the individual does not have to be an employee where the nature of his job requires dealing with large segments of the public, such as media people, journalists, celebrities of social media, or teachers who have a large segment of people taking instruction from them (Askarial, 2017).

As regards the content of the hate speech International law refers to the content of expression being prohibited by law if it violates one of the following areas: national, racial, or religious origin, race, color, religion, language, human dignity, and human rights. From traditional Islamic perspective, the content of the speech refers to the areas covered by the speech. For the expression to be classified as “hate speech,” it has to violate one of the areas such as violation of one of the five Islamic constants, abusive speech against the divine entity, abusive speech against the Prophet, (peace be upon him), Himself, abusive speech against the Prophet's Wives, family, and relatives, abusive speech against the companions of the Prophet (peace be upon him), abusive speech against the Islamic religion or the rites of worship such as abusive speech against the Quran, abusive speech against those who are devout to the Islamic religion, the speech that violates the Islamic supreme moral values, the speech that is distrustful of the definitive Islamic texts, violation of divinely-revealed religions, violation the principles of Islamic justice and equality (Alzahrani, 2017).

All Muslims and Non-Muslim citizens are equal before the Islamic Courts. Traditional Islamic law guarantees both Muslim and non-Muslim citizens the right to equality in habeas corpus. Islamic judiciary does not distinguish the ruler from the ruled, the rich from the poor, the noble from the ignoble, the woman from the man, or the Muslim from the infidel (Kamali, 1997). According to the Holy Quran, God said: “And let not the hatred of others makes you swerve towards wrong and depart from justice. Be just: that is closer to piety (The Quran, verse 5:9). In the Islamic judiciary, both justice between opponents, and decisions that are according to evidence and not according to the judge's knowledge of the state of any of the opponents, are the fundamental basis of the principle of equality

(Kamali, 1997). Islam made discrimination based on equality, between Men and Women in Certain Cases such as the rights of men and women in marriage, the right to inheritance, distinguishing between men and women regarding the responsibility of defending the Islamic state and violation of human dignity.

Considering the above discussion concept of hate speech in the perspective of traditional Islamic law, based on the five elements, does not exclude any form of speech, but stipulates that “any word or act” should be considered speech. In addition, the promoter of the speech includes “any individual and any group.” Traditional Islamic law provides specific topics and fixed principles under the elements of “the content of the expression” and “the context of the expression.” This law determines multiple contexts that determine the intent of the promoter of the speech. In conclusion, Islamic law considers that mere abuse is what determines whether a word or act should be categorized as hate speech. Islamic law considers that the intent of the promoter of speech accompanied by words or actions is an independent crime and punishable by law. Thus, the existence of a direct connection between the speech and the threat to others is not required in considering the speech hateful. In the case of the existence of a direct connection between the expression and the threat, the offence of the participation in the criminal act is added to the crime of incitement. It is likely that a single speech might address more than the content of the speech, may come in more than one context of hate speech, and may result in many potential effects. Therefore, the following table will be a reference in every speech as a demonstrative test to review all the aspects of a speech in order to conclude the degree to which the speech is considered lawful, or lies within the scope of hate speech according to Islamic law (Alzahrani, 2017).

V. COMPARATIVE ANALYSIS BETWEEN TRADITIONAL LAW AND ISLAMIC LAW

To understand conditions of limitations and restrictions imposed on freedom of expression better, a comparative study is in order. As stated in the previous chapter, International and regional instruments require that the restrictions must be provided by law that based on the basis of stipulated rule, case law, and the common law. By the same token, traditional Islamic law provides certain contexts, contents, and conditions of expression that must be subject to restrictions, such as, adopting fair speaking and avoiding wrong speaking, preventing laughing at others (Alzahrani, 2017), prohibiting defamation and sarcasm (Kamali, 1997), rejecting abuse directed at God and the Prophet, behaving well in dialogue among followers of different religions, preventing; concealing the truth, ascertaining the truth before making a speech, avoiding to publish evil, and expressing in accordance with the knowledge, not without it (Kamali, 1997)

Both International and Islamic law, in the absence of this condition, move to the application of the following two conditions of restrictions on freedom of expression, which are the restrictions must be necessary and based on legitimate aim. However, International law determines the scope of necessary restrictions in case of a pressing need to limit freedom of expression and in the least restrict possibly in order to ensure not exceed this freedom to violating the rights of others. While traditional Islamic law expands on defining the scope of necessary restrictions based on a religious basis. It imposed restrictions on any expression that violates any of the five Islamic constants, which are the Islamic belief in divinity, the Islamic belief in prophethood, the Islamic rituals of worship, the supreme moral values that determine man's relationship with others, and the definitive texts in Islamic law,

irrespective of the justifications and conditions (Altwaijri, 2003). The last condition of restrictions imposed on freedom of expression is a legitimate aim. International restrictions must be based on legitimate aim, such as for protection of national security, public order, public health or morals, or respect for the rights and reputations of others. Similarly, traditional Islamic law limits any expression that violated fundamental human rights, which are religion, life, wealth and property, thought, and offspring in order to create the perfect life that man can live peacefully. Thus, traditional Islamic law corresponds largely with international law in the conditions that must be provided to restrict freedom of expression. However, the religious nature of Islamic law has contributed to the expansion of the restrictions on the reverse of international law, which imposes restrictions in a strict manner and in line with the social need. Islamic law considers that a social need of Muslims lies in the full respect of the five Islamic constants, and not compromising them.

VI. CONCLUSION

This study is aimed mainly at finding the dividing lines between free speech and hate speech under international, national and Islamic laws in a comparative outline. The study has also analyzed, based on the definition, some of the most prominent mainstream speech in the Muslim world at the present time. In addition, the study has addressed extensively the issue of freedom of criticism from the traditional Islamic perspective, including the freedom to criticize religions and whether the speech of Islamophobia falls under that freedom or is classified as hate speech. To understand the interplay, in this law, between the principle of freedom of expression and the limitations and restrictions imposed on it better, this research has provided a comparative study with International law in certain relevant issues. At various points in this study, the research has noted ways in which this speech might be addressed. The study concluded that International law has struggled to find answers in the difficult balancing exercise of preventing hate speech and of protecting, at the same time, the freedom of expression. Nevertheless, international agencies have identified conditions of restrictions on freedom of expression to take into account, albeit not in an altogether systematic or refined fashion. These conditions are embodied in the following:

1. The restrictions must be provided by law. In the absence of this condition, it must be moved to the application of the following two conditions of restrictions on freedom of expression.
2. They must be necessary to protect based only on a pressing need to limit freedom of expression and in the least restrict it as much as possible.
3. They must be based on a legitimate aim, such as; protection of national security, public order, public health or morals, or respect for the rights and reputations of others.

The study concludes that traditional Islamic law has considered the freedom of expression to be an important fundamental of human rights, it must achieve certain essential objectives, which are the disclosure of truth, the honour of human beings, and fundamental rights. In addition, the freedom of expression is constructed, in essence, on some basic principles, such as, everyone shall have the right to criticize, freedom of religion, and freedom of thought. The paper further concludes that traditional Islamic law enacted some conditions and limitations on the freedom of expression in order to protect the rights of others and agree with the principles, legal rules, and morals of Islam.

Traditional Islamic law is consistent largely with the International and regional mechanisms in the three conditions of restrictions on freedom of expression, which are “provided by law, must be necessary and based on the legitimate aims”. As regard with the first condition of the restriction “must be provided by law”, traditional Islamic law provides certain contexts, contents, and conditions of expression that must be subject to restrictions, such as, adopting fair speech and avoiding incorrect speech, preventing laughing at others, prohibiting defamation and sarcasm, rejecting abuse directed to God and the Prophet, behaving well in dialogue among followers of different religious, preventing the concealment of the truth, ascertaining the truth before arriving at a decision, refraining from the publication of evil, and expressing (oneself) in accordance with knowledge, not without it etc. Regarding the second condition of the restriction “must be necessary”, traditional Islamic law expands on defining the scope of necessary restrictions based on its religious nature on the reverse of international law, which imposes restrictions restrictively and in line with social need. Islamic law considers that a social need of Muslims lies in the full respect of the Islamic constants, and not compromising them. Regarding the last condition of restriction on freedom of expression, which is “must be based on the legitimate aims” the traditional Islamic law restricts any expression that violates fundamental human rights, which are religion, life, wealth and property, thought, and offspring in order to create the perfect life that man can live peacefully.

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