



The Forbiddance of Hateful Statements in Media Within the Domain of European Council's Enactments and Iran's Statutory Provisions

Elham Teimouri Salmasi

Communication Law Graduate, University of Allameh Tabatabaei.Iran.

ABSTRACT

The contradiction between the detestable statements, as a form of abuse to the freedom of expression especially in the media, with the rules inserted in the universal declaration of human rights as well as in the other international and regional documents has long been an area of controversy and challenge; the establishment of a rational equilibrium between the aforementioned documents is among the objectives of every legal system and the regional and international organizations. In line with this, the European council has adopted policies and enacted treaties the most prominent of which is the European Convention and the verdicts sentenced by the European human right court so as to create some sort of balance between the right of freedom of expression and the hateful statements. Both the board of ministers and the parliamentary assembly, as the most important organs of the foresaid council, have contributed a lot to the creation and settlement of such a balance. In Iran, as well, although ordinary rules and regulations like the press law, the law of discriminative advertisement punishment as well as the enactments by the high council of cultural revolution indirectly and explicitly signify the forbiddance of hateful statements, but, despite the existence of cultural, ethnic and language diversity in Iran, the efforts in line with the prohibition of abhorrent statements along with the safeguarding of the freedom of expression are missing.

Keywords: *abhorrent statements, freedom of expression, media, European council, European human rights conventions, the press, Iran's statutory provisions*

Corresponding author: Elham teimouri salmasi

INTRODUCTION

Although freedom of expression is a means for the enjoyment of the other human rights and it has been warranted in a great many of the international human rights documents and the countries' constitutions, it has to be restrained in some of the cases because undue freedom would be followed by no result except chaos and the disruption of the society's public order.

One form of breaching the limits of freedom of expression is the use of abhorrent statements and expressions. These hateful statements feature an exceptional stance in the international law and even a special type of these expressions that lead to the instigation of genocide is considered as an international crime alongside with the war atrocities and the crimes against the human beings.

Respecting the equal rights of all the human beings constitutes the basis of a democratic society consisted of numerous cultures and languages. The outbreak of the hateful expressions is a challenge before and a threat to the democracy and equal freedom of the humans in the today's world and the proper way for fighting such expressions and statements is the major concern to the present study.

It has to be stated that the entire world is now faced with racist and religious-contending movements the main propeller of which is the hateful statements that are expressed largely via the media. Television, radio, the press and the internet have played a major part in the intensification of the clashes between the various groups of the different communities. According to the fact that the media have offered special coverage of the

hateful statements and racism moves during the course of history and they are specially gifted in the formation and change of the public thoughts of the societies therefore their role should not be neglected (Moradzadeh and et al, 1996).

The new media of the today's world play a considerable role in the broadcasting of these expressions. Inter alia the new media, the internet, except for some personal areas like electronic mail, is enumerated a member of public media. Therefore, it is also under the influence of the rights, freedoms, privileges and responsibilities of the whole family. Though the use of hateful expressions has been there since a very long time ago, the use of internet for the purpose of promotion and publication of such expressions is rather a new topic. Modern technologies transfer the ideas and information to a vast part of the society. These ideas and information that are more abundant and more diverse than what the media history has ever witnessed, the progresses in the information and communication technology can play a substantial role in the dispersion and processing of hateful expressions because, on the one hand, taking them into consideration is confronted with a lower number of obstacles and, on the other hand, the distribution of such topics is more readily done by way of the internet (eeli and et al, 2004).

1. Study Hypothesis:

The European council has enacted rules regarding the hateful expressions. But, the specific rules are missing in this regard in Iran. Forbiddance of hateful statements is a topic that is quite different from the other prohibitions imposed on the freedom of expression in Iran's statutory provisions.

2. The Concept of Hateful Statements and Challenges to Control them:

2.1. The Concept of Hateful Statements:

Although the expression "hateful statements" is being currently applied increasingly, the idea of what expressions should be regarded as the statements that instigate hatred in the others and therefore made forbidden is an issue that is frequently debated and highly questioned in the today's world. Such challenges have caused the countries and the international organizations to not be able to offer a single all-inclusive definition of such expressions. On the one hand, the existence of a consensus in this regard brings about vivid differences in the legal and supervisory methods but, on the other hand, the inability to offer a uniform definition of such expressions can be seen as an advantage by different countries because they can define it according to the structure of their own societies and this way a wider range of flexibility can be envisaged.

2.1.1. Defining Hateful Statements:

The term "hate" in Oxford Dictionary has been defined as a feeling of extreme dislike. So, the constraint "extreme" should be taken into account because the normal intolerance and hatred are the necessary features and emotions of the human beings that cannot be barred by any legal system. Also, the dictionary defines "hateful statements" as "the use of expressions that provide the grounding for the attack and annoy of individuals by the others due to their attachment to a special group or thing.

2.1.1.1. The Historical Trend of Hateful Statements' Emergence:

Although hateful expressions have been used in a great many of the communities since long ago, it can be concluded via a study of the historical trends that the hateful statements have been more of a racial hatred nature during the late 1920s and early 1930s. During early 1940s, they had become known as insult and in 1980s they were termed "hateful expressions" and "racist statements" which is also currently a very common term. Hateful statements have been seriously popular in the US since 1920 and they significantly influenced the US's law and policy. The years from 1920s till 1931 were the peak of the use of such statements in the US.

2.1.1.2. Hateful Statements' Elements:

An expression can be included in the hateful statements inclusion circle when it is qualified for the four following elements: the intention to instigate, hatred towards the national, racial and/or religious groups, the occurrence of instigation, the forbidden result or the creation of discrimination, enmity or violence (Zayyari, 2014).

2.1.2. Classifying the Hateful Statements:

Hateful Statements can be placed inside numerous classifications. These classifications help us better recognize the statements. Some types of hateful statements, especially the vivid forms thereof, should be controlled via legislation of the penal reaction sort. The other types should be curbed via non-punitive reactions like training, cultural and informative responses that do not necessarily encompass penal reactions.

2.1.2.1. Type of Transferring:

In one categorization, the hateful statements can be classified to direct or indirect statements, latent or vivid statements, rare or frequent statements and supported or unsupported statements.

2.1.2.2. Means of Transferring:

Hateful statements can be transferred orally and in direct communication, in written form via the internet or through a tangible mean like the confederation flag, football symbols or via the historical buildings. The means by which these hateful statements are transferred is of a great importance in terms of the audience domain and the intensity of their influence. Radio, TV and the press are among the other mass media. On the one hand, these media can be served as a tool for increasing the conversation and elevating the inter-culture understanding and they can play a positive role in this regard through depicting the various negative aspects of hateful statements. On the other hand, they can contribute to the promotion of the hateful statements through offering incorrect images and reports of the extant minorities in the society (Zaheri, 2012).

2.2. Challenges for Controlling the Hateful Statements:

International and regional countries and organizations behave differently in confrontation with the hateful statements. Treating these hateful statements differently has resulted in the creation of abundant challenges in the today's world. Therefore, the emergence of two opponent and proponent sets supporting and rejecting the delimitation of the hateful statements and their different reactions is indicative of the issue being highly focused in the international communities.

2.2.1. The Proponents and Opponents' Reasons for and against the Hateful Statements' Delimitation:

As it was mentioned, the methods of reacting to the hateful statements are different and each group has its own reasons for supporting or rejecting the hateful statements. On the one side, the opponents resist the delimitation of the hateful statements with their objective of freedom of expression. On the other side, the countries and proponents that agree to the delimitation and restriction of such hateful statements realize these expressions as a threat to the other freedoms specified in the universal declaration of human rights.

2.2.1.1. The Reasons of the Opponents of Hateful Statements' Demarcation:

The essential role of the freedom of expression has been underlined by many of the researchers. They believe that the freedom of expression is necessary for the discovery of the truth, fighting the extant policies and searching for the best solutions for an eventual goal of improving the society. These reasons alone are indicative of the states' inclination towards exertion of limitation on the freedom of expression and this, per se, has provided the opponents with excuses to fight back the hateful expressions' delimitation. The opponents believe that the exertion of limitation on the hateful expressions is not much effective because there is a chance of evading one's legal liabilities in the media, especially over the internet.

Also, in imposing limitations on the freedom of expression, one should pay attention to the proportion between the individual's interests and the society's interests but the observation of such a proportionate consideration is practically infeasible due to the fact that a precise boundary does not exist between the individual interests and social interests. Based on this set of individuals' notions, the imposition of restriction on the freedom of expressions should comply with the structure of the society of concern.

2.2.1.2. The Reasons of the Proponents' of Hateful Statements' Demarcation:

The proponents of the hateful statements' delimitation believe that these expressions should be prohibited based on the fact that they weaken the others' equal and indiscriminate rights and that the exertion of limitations on them is necessary for

safeguarding the public order. The idea has been reflected in the Articles 1&2 of the universal declaration of human rights that are approved by the general assembly of the united nations in 1948 (Kiakajuri and et al, 2011).

2.2.2. The International Human Rights System's Approach towards Freedom of Expression and Hateful Statements:

The freedom of expression is a basic right that has been sponsored in the majority of the human rights systems. On the other hand, the foresaid right is not an absolute one and it can be limited in favor of supports for the private and public interests. "The international and regional human rights documents, meanwhile authenticating the freedom of expression as a human right, have agreed on its demarcation".

2.2.2.1. In Global Level:

Freedom of expression is the most important right that has been authenticated in a great many of the global and international documents. The extent to which the freedom of expression is supported and limited differs in these documents but the primary objective of these documents is unitary and it is endeavored in arranging these documents to take into consideration the human rights scales and regulations and the limitations imposed on the freedom of expression should take place through paying attention to certain standards.

2.2.2.2. In Regional Level:

"Freedom possesses two general and specific meanings. Its general meaning which is more prevalent in American countries incorporates any sort of freedom in behavior that conveys a message. Corresponding to the American definition of freedom, it embraces both the verbal and written forms but the European countries put forth another form of freedom of expression that means freedom in expressing or transferring one's thoughts, ideas and notions". Therefore, in the European Council that is consisted of European countries, the specific meaning of freedom of expression is more frequently intended and this means the freedom of expression is more narrowly sponsored in Europe

3. The Method of Controlling the Hateful Statements in European Council and Iran's Legal System:

3.1. The Stances of the European Council's Members and Iran's Legal System:

The solutions proposed by the European Council regarding the hateful statements can be divided to two parts. One part is based on the treaties and the other part includes plans that are not based on treaties. The European Human Rights Convention, the Convention for supporting the minorities, the European Convention of transnational television and the cybercrimes convention and the appended protocol regarding the criminalization of the racist and foreigner-contending actions via the computer systems are inter alia the solutions that are based on treaties. The non-treaty based sources have been developed under the support of the board of ministers, parliamentary assembly and European commission against racism and intolerance as well as periodical meetings in the media.

3.1.1. Setting of Statutes:

Treaties passed by the European council are recognized as arranged statutes. These provisions largely emphasize the negative role of the media in releasing the hateful statements. The most important treaties approved in this regard are: the European human rights convention, the convention for the support of the national minorities, the European convention of transnational television, cybercrimes convention and the

appended protocol regarding the criminalization of the racist and foreigner-contending actions via computer-based systems.

3.1.2. Policy-Making:

The recommendations and the resolutions issued by the parliamentary assembly, the ministers' committee and the European commission against racism and discrimination intolerance as well as the activities by the campaigns are to be included in the collection of the plans that are not based on treaties. A great deal of attention has been paid to the media's positive role in the context of these recommendations and activities.

Parliamentary assembly is the advisory member of the European council that is consisted of the representatives from the member countries congresses. The recommendations and the resolutions by the parliamentary assembly is a source for the ministers' committee and the parliament of the member European council countries in a great many of the cases parallel to their combat against the hateful statements. The ministers committee is the decision-making organ of the European council. The institution is comprised of the member countries' foreign ministers and/or their permanent representatives in Strasbourg; in addition, according to the article 13 of the board of ministers' charter, the ministers' committee acts on behalf of the council. The European Council has founded the European commission for racism intolerance that is assigned to fight racism and racial discrimination in Europe with its approach towards supporting the human rights. The commission offers recommendations addressing the member states of the European Council regarding the various topics for the adoption of policies. The online youth campaign against the online hateful statements is a project exercised by the European Council's youth department that has been put into practice in the years from 2012 to 2014(Weber and et al, 2009).

3.2. The Stance of the European Court of Human Rights in regard of the Hateful Statements:

Although the European court of human rights has not offered a precise definition for the hateful statements, it has always been seeking to resolve the problem between freedom of expression and hateful statements.

It is stated in the introduction to the court's charter that "in multicultural communities featuring the distinctive characteristic of multiplicity of culture, religion and lifestyle, there is a need for adjusting the right to the freedom of expression with the other rights like the freedom of thoughts, conscientiousness, religion or the absence of discrimination". The court stipulates that the tolerance and veneration of equal prestige and fame of all the human beings forms the foundation of a democratic and pluralistic society. Therefore, it is necessary to set some sort of limitation on some statements that expand, instigate, promote or justify hatred targeting religion intolerances and so on.

The European Council has assigned certain authorities to the countries for legislating rules and regulations regarding the hateful statements. The amount of the authority which is supervised by the European human rights court depends on the nature of the statements of concern. In practicing its supervisory task, the European human rights council does not play the role of a qualified local authority but it inspects the decisions made by these authorities according to the Article 10 of the Convention. This way, the court evaluates the complaints it receives and makes a decision as to whether the reasons offered by the qualified authorities are appropriate and sufficient for the creation and exertion of limitations corresponding to the contents of the convention or not (Cohen and et al, 2011).

3.3. The Stances of the European Council Member Countries in regard of the Hateful Statements:

In regard of the fight against racism based on criminalization of instigation of hatred or racial discrimination, the France's legislature equals any sign inducing crimes against the mankind as a sort of supporting crimes against the humanity. The Act 1881 of the France's press law in Article 24 prohibits instigation to racial discrimination, hatred and violence based on national, racial and religious tendencies.

Germany's penal code of law has criminalized the cases that include instigation to hatred and violence against a fraction of the people as well as the publication of the materials that are ethically harmful for the youngsters (including the topics that contribute to the instigation of racial hatred).

England is considered as a leading country in the fight against hateful statements. Article 18(1) of the England's public order law approved in 1986 states that "the use of threatening, annoying and derogatory words with the intention of stimulating racial hatred is a crime" and the article 19 of the same law knows "the publisher, the distributor and the writer of such hateful words as criminals". Moreover, there is established a "British Institution of Human Rights" in England that works against the hateful statements.

3.3.1. The Stances of the Countries within the Framework of Policy-Making:

The European Council member countries take measures in line with making certain policies in the course of a collection of interventions that are carried out within a certain schedule, including the "action plan document", "information collection", "registration and report", "training and policy-making by the legal, judicial and the other public authorities", "self-regulation and behavioral codes", the "role of the media" and "the civil society and the campaign" (Erni and et al, 2009).

3.4. Controlling the Hateful Statements in Iran's Legal System:

All of the countries including the Islamic Republic of Iran, based on Article 20 of the international convention of civil and political rights as well as based on the Articles 4&5 of the Convention for the elimination of all forms of racial discrimination, have become committed to enact rules and regulations against hateful statements, especially by the powerful and influential individuals, against majorities' suppression of minorities and against ethnic, national, political, religious and racial discriminations and so forth. The important point in Iran's legal system is its reliance on two elements: one is legal confrontation with the promulgation of hatred and creation of inflammation in the society and the second is the support provided to the groups of people that are most exposed to damage and risk. Hateful statements and advertisement for the war might be part of an evident historical reality and it might bear no insulting tone but it might be expressed through creation of an inflammatory space in the minds and mouths against the generality of the members of a minority and expose their security to risk.

3.4.1. Hateful Statements in the Dictionary of Statutory Provisions:

The Constitution, ordinary regulations, international documents and the enactments and the guidelines are regarded as the documents that deal with the prohibition of hateful statements in Iran's legal system.

3.4.2. Hateful Statements in the Procedures:

Iran, as a country in which various religions, ethnicities and races live along with one another, is more exposed to racial, national and religious hatred. Due to the reason that there is no definition provided in Iran's law regarding the hateful statements and it has been indirectly pointed out in some of the regulations and, subsequently, the legal punishments in this

regard are very weak and incomplete, therefore, the judicial procedures can be applied to fill this gap. Although the legislators might possibly think that the society is needless of a definition for such a term, it does not mean that such statements are not being used for various reasons within the society.

The procedural unity verdict, 7/389-08/05/2004, pertains to the insults to the religious sanctities and states that "the dispersion of flyers insulting the governmental authorities on the internet sites is a crime and it is punished corresponding to the regulations of Islamic penal code of law, but writing such insulting contents to a CD or keeping them in a computer HDD has not been regarded as a crime as long as the contents are not taken out of the recorder's privacy or displayed to the others.

Also, the Procedural Unity verdict, 7/4957-05/09/2003, asserts that "corresponding to the article 513 of the Islamic penal code of law, there is no difference between the great Apostle of Islam, His Highness Muhammad (may Allah bestow him and his sacred progeny with the best of His regards) and the other great divine apostles.

According to the theory 7/3472-16/011/1998 of the Procedural Unity Verdict, insult is a common law issue and its recognition is assigned to the judge trying the case. However, it has to be added that the intention is also necessary in insulting the religious beliefs and sanctities meaning that the insulter should have the intention to offend but if s/he is found having no intention for doing so, his or her action or statement will not be deemed an offence or insult (The book of Europe, 2003).

3.4.3. Comparing the Stance of Iran's Legal System with that of the European Council in regard of Hateful Statements:

Iran and European Council's legal systems have similar regulations regarding the liabilities of the internet service providers. However, there are different procedures followed by the member countries of the European Council and the rules in some countries consider the internet service providers as not being liable at all and some others have invented their absolute liabilities. In the protocol appended to the cybercrime considerations of the European Convention, the underlying premise is the ISPs' lack of any responsibility and the main responsibility is to be shouldered by the ones dispersing the contents unless Internet Service Provider's guilt is justified. In Iran's legal system, according to the general axiom inserted in the civil liabilities law, the ISPs' liability is proved based on the perpetration of certain guilt, but the anticipation of the circumstantial evidence has been considered useful for the protection of victims of such crimes (Zamani and et al, 2014).

CONCLUSION

According to the discussions presented so far, it can be stated that there are large differences in interpreting the hateful statements in European Council between the various member countries. Despite the various interpretations provided for such statements, the European Human Rights Convention has not offered a clear definition of what hateful statements mean. The European Human Rights Court, as well, has made use of the term without presenting a decisive definition thereof. The lack of offering a clear-cut definition of the term by the court might have been for the reason that it does not like to be limited to the constraints of a definition and resultantly it can make proper decisions case-specifically according to the conditions.

There is a special culture governing every society. The domestic courts issue their verdicts based on the culture and the norms flowing in that society. Therefore, due to the familiarity that the domestic courts have regarding the culture and norms of their immediate society, it is firstly this same domestic courts that rule an accusation and in case that the plaintiff does not find the

sentence by the domestic courts in proportion with the guilt perpetrated against oneself then s/he can refer to the European Human Rights Court. The international and regional documents should possess an amount of flexibility and they should not be considered trivially so that every country can make its own rendering of the hateful statements according to its governing culture and norms. Thus, the international documents should assign the authority of determining the details to the domestic regulations and only specify the generalities as before. In an investigation of the European Council's documents, it can be figured out that although the conventional plans are per se indispensable and play a considerable role in the fight against the discriminations and hateful contents, but there are also plans that are not based on treaties that are also important. These non-treaty based plans can be politically convincing and they are capable of coping with a wide spectrum of hateful expressions.

On the one hand, the prohibition or limitation of hateful statements can be realized as a short-term solution, whereas finding the underlying reasons and training the people in long-run in the fight against the hateful statements seems more effective; on the other hand, the recommendations by the Ministers Committee, especially 20&21(97) should be applied for the exertion of a purposeful supervision and such key advises can create a balance between the right to freedom of expression and the prohibition of the hateful statements. These recommendations act against any set of the hateful statements in a specific manner and they are flexible.

However, the European Council's rules and procedures have two pitfalls: first of all, they do not support the newly emergent vulnerable minorities and second of all, the predominantly revolve around the pivot of races and the element of religion has been left out of their considerations. Ignoring the element of religion not only in the European Council's documents but also in the other international human rights documents including the Convention for the elimination of any sort of racial discrimination is clearly visible. Therefore, the member countries of the European Council place a greater emphasis on the necessity to support against racial discrimination while the support against the religious discrimination has been found less accentuated.

In regard of Iran's legal system, it has to be stated that there is felt a legal gap according to the fact that the title "hateful statements and contents" has not been mentioned in Iran's penal code of law and there are not any codified and clear sources in this regard. The Iranian law-maker has failed short of enacting rules that act as barriers to the disruption in the public order, the others' rights and freedoms, social security and norms. Thus, though some rules and regulations, including the press law, the penal code of law on promoting racial discrimination as well as the enactments by the high council of cultural revolution, have specified the forbiddance of hateful statements but, despite the existence of diversity in the culture, ethnicities and language in Iran, no efforts has been made in line with the prohibition of hateful statements along with guarding the freedom of expression.

The solutions to the fight against hateful statements can be summarized as below:

1) Individual Complaints:

The penal complaints are appropriate when the criminal act is carried out frequently by the individual and there is not envisaged any other way for fighting it; or, if the criminal act is perpetrated in an organized manner.

2) Asking the Writer to Omit the Content or Consider a Right to Respond:

The second choice for fighting the hateful statements is asking a writer to omit the hateful contents or consider a right to

respond. This method can be used when certain rules or regulations are violated by the writer and the penal measure is deemed ineffective in regard of the breach.

3) Warning the Site Manager regarding the Topics Published on the Internet, the Editor in the press or newspapers or the Manager in a TV or radio Station:

4) Warning the Internet Service Providers (ISPs) regarding the Topic Published on the Internet:

Concerning the topics published on the Internet, the internet service providers should be referred to when there is not received any response from the site manager in regard of the hateful contents or statements.

5) Self-Regulation and Creation of Behavioral Codes and Rules by the Media Community:

In the end, it has to be remarked that in order to succeed in the fight against the hateful statements and create balance between the freedom of expression and limitation of hateful statements, it is better to make a rendering of the European Council's treaties along with the other international and regional documents. Such an approach causes greater cohesion in the Human Rights Conventions and Treaties and this makes us ascertained that the interpretations are not contradictory to the other documents. On the other hand, various values should be assessed and the proper measures should be taken based on their priorities in order to preserve the equilibrium.

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