

Freedom of expression and incitement to hatred

– How to strike a balance? To regulate or not?!

By: Yahia Shukeir

- 1- One's person critique is another's blasphemy". Andrew Walsh
- 2- **"All great truths begin as blasphemies."** George Bernard Shaw

The right to freedom of expression is well established in international law. The two main UN human rights instruments — the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights (ICCPR).

Article 19 of both documents protects the right to freedom of expression.

International law also requires States to take **positive measures** to create a climate in which human rights are genuinely protected and freedom of expression can thrive, including the dissemination of different points of view.

At the same time, Article 20(2) of the ICCPR requires States to prohibit the advocacy of any national, racial or religious hatred.

However, any restriction imposed on freedom of expression must meet the "three part test" included in A 19:

- 1- provided by law,
- 2- necessary (in a democratic society) and proportionate ,
- 3- to protect an overriding legitimate aim (national security and privacy).

There are many joint declarations interpreted the exceptions and any interference with freedom of expression always must be narrowly construed.

This means that freedom of expression can be limited in the name of prohibiting the incitement of hatred only if there is a close nexus between the expression in question and a "substantial harm risk".

Also it means that the restriction imposed **is the least restrictive means** possible for protecting the interest threatened, and non-arbitrary manner.

In summary, international law calls for a careful balance to be struck between the protection of the right to freedom of expression, on the one

hand, and the requirement to prohibit advocacy for hatred on grounds of religion, on the other and not excessive in the circumstances.

RWANDA

In the Prosecutor v. RTLM radio the International Criminal Tribunal for Rwanda (ICTR) concludes that: "Much of the responsibility for the genocide in Rwanda can be blamed on the media. Many people have heard of Radio des Mille Collines, which began broadcasting a steady stream of racist, anti-Tutsi invective in September 1993."

The criminal prosecution and conviction of the RTLM journalists was immensely important. It establishes the principle of the accountability of journalists for the consequences of what they broadcast.

Penalties

In exceptional circumstances when penalties should be imposed, no one should be penalized for the dissemination of hate speech unless:

- 1- It has been shown that they did so with the **intention** of inciting discrimination, hostility or violence.
- 2- Any imposition of sanctions by courts should be in strict conformity with the principle of proportionality.
- 3- Permitted penalties shouldn't have "**chilling effect**" on freedom of expression.

The principle of non-discrimination is completed by "equality", as mentioned in Article 1 of the UDHR.

UNESCO

UNESCO Declaration on role of media in strengthening peace (1978):

It requires as a basic discipline the moral obligation to seek the facts without prejudice and to spread knowledge without malicious intent

In practice, we've seen that some Arab and Muslim countries make the exception the role in a selective way contradicts the spirit of A19.

In 2005, when a Danish newspaper published some cartoons, inclosing one depicting the prophet Mohammed, in Damascus a Government organized demonstration had burnt the Danish Embassy and the demonstrators also burned the Chilean Embassy.

Are the religious and beliefs immune to criticism?

Of course not, in a democratic society everything should be discussed and this is the best way to find out the real truth. Otherwise religious can become a tool of exploitation.

In Saudi Arabia everything is referred to Islam to cover any violation of freedom of expression. The most obvious example is preventing women from driving cars as the only country in the globe. While captain "Hanadi Hindi" is allowed to pilot a Boeing jet 767 from Bangkok to Riyadh, but can't not drive her car from the airport to her home.

This is one example highlights the irony of Saudi women.

In the absence of a free media, the authorities are able to promulgate crucial laws punishing opponents.

There is a misuse of incitement to religious hatred legislation in most Arab & Muslim countries. At the other hand there are rising number of Arab websites carry messages of ethnic, racial and religious hatred.

CONCLUSIONS

As a journalist & human rights activist, to solve this dilemma I encourage mainly promoting ethical standards and best practices in solving this issue.

In exceptional circumstances when criminalizing hatred speech, the interference must meet the above mentioned 3 part test.