

Gender-Based Violence and Religion

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*Reinforcing Rights and
Clarifying the International
Framework*

Edited by

Amit Anand and Deekshita Das

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FOREWORD

Religion, a topic that touches many—yet also one that is famously discouraged to talk about in social settings.

Religious belief has long been a part of human existence. It has served as a source of significant comfort as far back as documented history.¹ At the same time, it remains a subject matter that is highly contested.²

“Gender-Based Violence and Religion: Reinforcing Rights and Clarifying the Existing International Human Rights Framework” is a critical, courageous, and necessary scholarly project. I commend the editors and authors of this volume for taking up this challenge—a challenge that many shy away from: to interrogate the intersections between religious traditions and gender-based violence. They do so without sacrificing nuance, empathy, or academic rigour.

As someone whose academic and professional grounding lies within European legal frameworks—particularly the European Convention on Human Rights (ECHR)—I could not help but read this book while continually contemplating the living instrument doctrine.

This principle is central to European human rights jurisprudence and was developed by the European Court of Human Rights (ECtHR).³ The living

¹ Mircea Eliade, “History of Religions and a New Humanism,” *History of Religions* 1, no. 1 (1961): 1–8; Mircea Eliade, *The Quest: History and Meaning in Religion* (Chicago: University of Chicago Press, 1984); Stephen R. Kellert and Timothy Farnham, eds., *The Good in Nature and Humanity: Connecting Science, Religion, and Spirituality with the Natural World* (Washington, DC: Island Press, 2013) 25; Johann Gottfried Herder, *Ideas for the Philosophy of the History of Mankind* (2024), 1–752.

² Galen Watts and Sharday Mosurinjohn, “Can Critical Religion Play by Its Own Rules? Why There Must Be More Ways to Be ‘Critical’ in the Study of Religion,” *Journal of the American Academy of Religion* 90, no. 2 (2022): 317–334; Robert Launay, “Defining Religion: Durkheim and Weber Compared,” *Religions* 13, no. 2 (2022): 89.

³ European Court of Human Rights, *Tyrer v. United Kingdom*, no. 5856/72, Judgment of 25 April 1978, Series A no. 26.

instrument doctrine affirms that Convention rights must be interpreted in light of present-day conditions in order to accommodate evolving social norms.⁴

If one considers the continuous development of societies, this principle ensures that the rights contained in the Convention are not frozen in time, but are able to grow and develop alongside society—thus ensuring broad, future-proof protection.⁵

In practice, this has resulted in a large body of cases reviewed by the ECtHR in which areas of social practice and understanding—particularly those strongly linked to traditions, such as religious or cultural customs—are weighed against evolving interpretations of fundamental concepts such as dignity, autonomy, equality, and freedom from harm, including violence.⁶

As indicated earlier, religion, by contrast, is often rooted in historical traditions, with many of the world’s most influential religions tracing their formal and institutional foundations back centuries—if not millennia.⁷ It is

⁴ Council of Europe, *The European Convention on Human Rights: A Living Instrument at 70 – Background Paper for the Judicial Seminar 2020*, Strasbourg, January 31, 2020, https://www.echr.coe.int/documents/d/echr/seminar_background_paper_2020_eng; Rick Lawson, Speech at the Opening of the Judicial Year Seminar: The European Convention on Human Rights as a Living Instrument – Seventy Years of Evolution, Strasbourg, January 31, 2020, https://www.echr.coe.int/documents/d/echr/Speech_20200131_Lawson_JY_ENG.

⁵ *Ibid.*

⁶ See for example: European Court of Human Rights, *Kokkinakis v. Greece*, no. 14307/88, Judgment of 25 May 1993, Series A no. 260-A; European Court of Human Rights, *Leyla Şahin v. Turkey*, no. 44774/98, Judgment of 10 November 2005, ECHR 2005-XI; European Court of Human Rights, *S.A.S. v. France*, no. 43835/11, Judgment of 1 July 2014, ECHR 2014-III.; European Court of Human Rights, *Osmanoğlu and Kocabaş v. Switzerland*, no. 29086/12, Judgment of 10 January 2017, ECHR 2017.

⁷ Nicolas Baumard and Coralie Chevallier, “The Nature and Dynamics of World Religions: A Life-History Approach,” *Proceedings of the Royal Society B: Biological Sciences* 282, no. 1818 (2015): 20151593; José Casanova, *Global Religious and Secular Dynamics: The Modern System of Classification*, Brill Research Perspectives in Religion and Politics 1, no. 1 (2019): 1–74; Susan Sherratt and Andrew Sherratt, “The Growth of the Mediterranean Economy in the Early First Millennium BC,” *World Archaeology* 24, no. 3 (1993): 361–378.

not surprising, then, that this kind of rich heritage is recognized as being worthy of protection.

Article 9 of the ECHR, mirrored in Article 18 of the ICCPR, seeks to protect the freedom of thought, conscience, and religion.⁸ At the same time, these rights—while crucial in a free and pluralistic society—are not without limitations.⁹

In human rights law, there is an understanding that while some rights, such as the prohibition on torture and inhuman or degrading treatment, are absolute,¹⁰ other rights—such as the freedom of religion—are qualified.¹¹ This means they can be limited, most notably when the manifestation of religious beliefs results in harm to others.¹²

When such harm affects some of the most vulnerable members of society, it is absolutely vital that international human rights law strikes a balance—protecting the freedom of religion while preventing that same freedom from being used to justify discrimination or violence.

⁸ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, adopted November 4, 1950, entered into force September 3, 1953, Article 9; United Nations, *International Covenant on Civil and Political Rights*, adopted December 16, 1966, entered into force March 23, 1976, Article 18.

⁹ Bill Bowring, “Negating Pluralist Democracy: The European Court of Human Rights Forgets the Rights of the Electors,” *KHRP Legal Review* 11, no. 6 (2007): 67–96; Costanza Nardocci, “Equality & Non-Discrimination Between the European Court of Justice and the European Court of Human Rights: Challenges and Perspectives in the Religious Discourse,” *Challenges and Perspectives in the Religious Discourse* (September 28, 2018), *University of Milano-Bicocca School of Law Research Paper* 18-12 (2018).

¹⁰ European Court of Human Rights, *Chahal v. United Kingdom*, no. 22414/93, Judgment of 15 November 1996, ECHR 1996-V, § 79; European Court of Human Rights, *Guide on Article 3 of the European Convention on Human Rights – Prohibition of torture*, updated 31 August 2022 (Strasbourg: Council of Europe), https://www.echr.coe.int/Documents/Guide_Art_3_ENG.pdf.

¹¹ Council of Europe, *The European Convention on Human Rights: A Living Instrument* (Strasbourg: Council of Europe, 2020), <https://www.coe.int/en/web/impact-convention-human-rights/the-convention-as-a-living-instrument>.

¹² European Court of Human Rights, *Guide on Article 9 of the European Convention on Human Rights – Freedom of thought, conscience and religion*, updated 31 August 2023 (Council of Europe: Strasbourg), https://www.echr.coe.int/documents/guide_art_9_eng.pdf.

There is an interpretive challenge here: the right to freedom of religion and belief must be safeguarded without allowing it to be wielded in ways that perpetuate harm.

This volume tackles that very balancing act by asking how international human rights law can remain responsive—capable of protecting religious plurality and the urgent need to protect individuals from harm.

I commend the contributors to this book for illustrating the importance of taking a living, breathing approach to human rights law—one that recognises the need to adapt to social transformation, and is courageous enough to address subject matters that many avoid for fear of controversy or backlash.

I must credit the editors and contributors of this book for their principled analysis—rather than polemic. The result is a textured, multi-jurisdictional and interdisciplinary account that emphasises the dignity of all human beings, while also acknowledging the significance of religion in many people's lives.

The overall starting point of this volume is the recognition that gender-based violence extends beyond individual misconduct. Instead, it constitutes a systemic and structural phenomenon, deeply rooted in power imbalances that are often legitimised through ideological scaffolding—including cultural, legal, and theological bases—and often justified through religious narratives.

Importantly, this book challenges the role of religion in that context while not positioning religion as either monolithically regressive or uniformly oppressive. In fact, some of the chapters seek to identify and emphasize the countervailing potential of religious traditions to foster justice, healing, and reform.

Although the focus of this book is to challenge religious practices linked to gender-based violence, it also takes a refreshing stance by acknowledging the dilemma faced by many women around the world: opposing patriarchal aspects within faith communities does not necessarily mean rejecting their religious identities—identities that still form an integral part of their lives.

By focusing on a human rights-based discourse that is more responsive to nuance, the aim is to confront harms committed in the name of religion

without removing spiritual agency—and to seek equality within faith rather than outside it.

The editors' commitment to nuance is particularly evident in the diverse range of interdisciplinary contributors.

For instance, in the chapter “*The Cyclic Nature of Discrimination: Gender, Religion, and Authority in the Fight Against Violence Against Women*”, Amber Heaviside effectively illustrates how traditional sources of authority operate via cycles of power, privilege, and enforcement.

Drawing on sociological and philosophical perspectives, she challenges the ways traditional authority can contribute to systemic gender-based discrimination—even in jurisdictions that appear to have strong commitments to equality. Her chapter does not label religious influence as inherently oppressive, but rather examines how it operates as a form of social authority, capable of reinforcing existing social hierarchies.

Following a more applied doctrinal approach, Dr Samantha Spence and Dr Girish Kumar Jay examine how Indian states navigate the delicate balance between protecting religious freedom and enforcing gender equality.

By exploring landmark cases such as *Shabano* and *Sabarimala*, this chapter shows how judicial and legislative responses have—sometimes successfully, sometimes less so—sought to strike a balance between competing constitutional obligations.

I found this chapter particularly valuable, as it exemplifies similar legal dynamics to the living instrument principle in the European human rights framework, and shows the potential for human rights protection in light of changing social norms within other regional systems.

It is clear that this book has been curated with scholarly care by Dr Amit Anand and Ms Deekshita Das to ensure an interdisciplinary engagement with the legal, theoretical, sociopolitical, and historical dimensions of gender-based violence and its relation to religion.

The editors have brought together a wide range of contributors from diverse backgrounds—academics, legal practitioners, and activists—providing a rich and multifaceted collection of knowledge.

What I find particularly admirable about this book is that it refuses to sanitise or euphemise. Its contributions tackle difficult and often avoided

subjects—such as forced marriage, menstrual discrimination, patriarchal family laws, reproductive rights, institutional complicity, and social impunity.

In doing so, the editors have curated a space for constructive academic engagement with difficult conversations. This is a powerful reminder that silence in the face of violence is not neutrality—it is complicity.

To the editors, Dr Amit Anand and Ms Deekshita Das: I am honoured to have been asked to contribute this foreword to your book. I extend my sincere admiration for your pursuit of justice for marginalised communities—both in this work and beyond.

Finally, I want to highlight how this book may be seen as a call to action (acknowledging I personally feel called to action whenever I engage with anything). It encourages readers to view human rights as a living framework—one that evolves alongside the societies we live in and it reminds us that law, on its own, is not enough to achieve justice for everyone. Instead, courage, imagination, and a refusal to look away are also necessary.

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‘DISCIPLINING’ THE ROGUE BODY: UNDERSTANDING THE INSTRUMENTALITY OF THE MISOGYNIST SPEECH OF HATE

MRINALINI KUMAR

Several scholars, especially Foucault, have talked about the human body as the source and target of power. Consequently, any human body that does not submit to power is regarded as a ‘rogue’ body. ‘Disciplining’ the body then becomes critical to maintaining pre-established power structures. Following this line of thought, one can argue about the instrumentality of hate speech in this endeavour. Due to the fluidity in the definition of hate speech, one understands it through the narratives of exclusion and discrimination that it creates and propagates. In this context, this paper seeks to understand how hate speech creates, moulds, and manipulates bodies into docility. This research shall use misogyny as the form of hate speech to be studied. It will assess women’s lived experiences using a questionnaire method, to assess the mechanisms and depths of docility it has achieved and is yet to achieve. Misogyny as an exclusionary discourse amplifies already existing anxieties and insecurities and creates new ones for the targeted and targeting groups. It leads to individual as well as collective coercion of bodies and is an issue that will exist until patriarchy breathes. Therefore, this research is relevant in understanding the nuances of hate speech, and how it affects women’s daily lives.

Keywords: power, misogyny, hate speech, docility, exclusion, patriarchy

Introduction

Several scholars, especially Foucault, have talked about the human body as the source and target of power. The emergence of power, therefore, does not rely on domination and rule-giving but is about the construction and

organization of subjects in various domains, as expounded by Foucault.¹ Furthering this thought, Foucault surmised that by breaking down the functions, movements, and capabilities of the human body, its performance could be optimized, calculated, and improved.² While Foucault's understanding revolved more around the role of the state in establishing such a power structure, it can be wielded by any structure that defines the power narrative. If you 'fall into line' to be *improved*, you will strengthen the status quo. However, if you do not *submit*, you will be regarded as a 'rogue' body. Dictionary definitions of being rogue circle around behaving in a pattern that is not normal. Yet, who or what defines 'normal'? Therefore, in the context of this paper, going rogue is about threatening the status quo or the normal or the patriarchy arising from the pervasive heteronormative ideologies taken as universal truths. 'Disciplining' the body then becomes critical to maintaining pre-established power structures. Herein, obedience is achieved through training and practice. Since discipline cannot be learned in one day, it is a slow progression of ingrainings, socializing, and the acculturation of probable threats.

Following this line of thought, one can argue about the instrumentality of hate speech in this endeavour. In all the previous research accomplished on the topic of hate speech, there has been one common link - that of its potential to incite violence necessitating its consequent regulation. Arguments for and against such regulation dominate the discourse on hate speech. However, its intrusive potential has not been extensively elucidated. Due to the fluidity in the definition of hate speech, it can be understood through the narratives of exclusion and discrimination that it creates and propagates. Yet, such narratives do not always lead to violence; many times, they lead to compliance.

In this context, this paper seeks to understand how hate speech creates, moulds, and manipulates bodies into docility. This research shall use misogyny as the form of hate speech to be studied. It will assess women's lived experiences using a questionnaire method, to assess the mechanisms and depths of docility it has achieved and is yet to achieve. While misogyny affects all genders in their behaviours and perceptions, this paper focuses only on the experiences of women. Misogyny leads to individual as well as

¹ Wendy Brown, "Power after Foucault," in *The Oxford Handbook of Political Theory*, ed. John Dryzek, Bonnie Honig, and Anne Phillips (Oxford University Press, 2008), 67.

² Gary Gutting and Johanna Oksala, "Michel Foucault," *Stanford Encyclopedia of Philosophy*, 2022, <https://plato.stanford.edu/archives/fall2022/entries/foucault/>.

collective coercion of bodies and is an issue that will exist until patriarchy breathes. Therefore, this research is relevant in understanding the nuances of hate speech and how it affects women's daily lives.

Hate Speech and Its Web of Opacity

Language, even though an arbitrary development, lays the foundation of signifiers of the system of signs and their relationship with imagery associations. Even though it provides a medium of expression, it also provides ammunition to the dialogues that facilitate repression. Language is a manifestation of the networks of power on which a society is founded. Due to this, language can never be neutral,³ neither in its expression nor in its effects. Gorenc⁴ argues that language reflects and structures our ideologies and worldviews, thereby not only affecting the target population but every one of us. Consequently, language not only describes and informs but influences and persuades people⁵ to maintain the status quo by translating itself into action through speech. Cornwell and Orbe⁶ argue that speech is not an individual experience but a relational and meaning-making activity, in the sense that it defines, labels, differentiates, and represents power. Hate speech emerges in this matrix.

The attempt to define hate speech has been made by several scholars; however, it is still considered to be an essentially contested concept. Therefore, before analysing its web of opacity, we need to understand what its strands are made of. When discussing hate speech, several keywords share the discursive dais, namely, 'odious', 'offensive', 'intolerant', 'assaultive speech', 'persecutory, hateful, and degrading' as well as 'linguistic violence.'⁷ While Davidson et al.⁸ refer to hate speech as any

³ Nina Gorenc, "Hate Speech or Free Speech: An Ethical Dilemma?," *International Review of Sociology* 32, no. 3 (2022): 416.

⁴ Gorenc, "Hate Speech," 416.

⁵ Gorenc, "Hate Speech," 416.

⁶ Nancy C. Cornwell and Mark P. Orbe, "Critical Perspectives on Hate Speech: The Centrality of 'Dialogic Listening'," *International Journal of Listening* 13, no. 1 (1999): 78.

⁷ Katharine Gelber, "Differentiating Hate Speech: A Systemic Discrimination Approach," *Critical Review of International Social and Political Philosophy* 24, no. 4 (2021): 4.

⁸ Tamara Fuchs and Fabian Schäfer, "Normalizing Misogyny: Hate Speech and Verbal Abuse of Female Politicians on Japanese Twitter," *Japan Forum* 33, no. 4 (2021): 4.

language that communicates hatred towards a targeted group or is derogatory, humiliating, or insulting towards its members; Parekh⁹ bases it on three characteristics namely, an identifiable individual or group, stigmatizing it based on 'highly undesirable' qualities, leading to the target group being viewed as an object of hostility. The ammunition provided by hate speech, therefore, is the vocabulary, a common enemy, and a mutual interest in ridding society of them.¹⁰ Further, Carlson¹¹ understands hate speech as upholding existing social hierarchies and consequently obstructing equality; disparate power relations are reproduced which creates an environment of tolerance of "others" subjugation. Hate speech is also defined as weaponized words that terrorize, humiliate, degrade, abuse, harass, threaten, and discriminate.¹² The keywords stringing all these various definitions together are abuse, assault, weapon, violence, and subjugation among others.

However, Gelber¹³ highlights the complexity behind the definitions of hate speech. When the term 'hate' is used to describe this speech, the presence of 'hate' as an emotion becomes the prime determiner herein, which is not always the case.¹⁴ Hate is a severe dislike of any person, group, or entity, but that is not always the motivation behind hate speech. Since it is mired in insecurity, control, and domination, hate speech is much more than hate. Yet, it is a convenient demarcation. Further, hate speech is not limited to mere speech that is vituperative or marred by epithets or profanities.¹⁵ Contrarily, according to Waseem et al.¹⁶, abusive language can be explicit and implicit, with the former being overtly derogatory, and the latter hiding behind sarcasm. Therefore, hate speech is not only overt but can be expressed covertly as well. Therefore, such a water-tight categorization of hate speech does not help remove the opacity surrounding it, but instead, increases it.

⁹ Nuraan Davids, "On the (in)Tolerance of Hate Speech: Does It Have Legitimacy in a Democracy?," *Ethics and Education* 13, no. 3 (2018): 3.

¹⁰ Caitlin Ring Carlson, "Hate Speech as a Structural Phenomenon," *First Amendment Studies* 54, no. 2 (2020): 2.

¹¹ Carlson, "Hate Speech as a Structural Phenomenon," 1.

¹² Katherine L. Hatfield, Kellie Schafer, and Kristopher A. Stroup, "A Dialogic Approach to Combating Hate Speech on College Campuses," *Atlantic Journal of Communication* 13, no. 1 (2005): 42.

¹³ Gelber, "Differentiating Hate Speech," 16.

¹⁴ Gelber, "Differentiating Hate Speech," 16.

¹⁵ Gelber, "Differentiating Hate Speech," 16.

¹⁶ Fuchs and Schäfer, "Normalizing Misogyny," 4.

As a type of speech swimming in a plethora of definitions, the harms hate speech causes are also multi-fold. According to Feinberg¹⁷, harm can be perceived as ‘setbacks to interests’ that focus on living a *dignified life* (Italics mine). To understand these diverse harms caused by hate speech, Gelber and McNamara¹⁸ talk about two categories, namely, consequential harms and constitutive harms. The former focuses on the propagation of negative stereotypes as well as the conditioning that normalizes such behaviour; while the latter talks about subordination, silencing, fear, victimization, emotional symptoms, restrictions on freedom, lowering of self-esteem, maintenance of power imbalances, undermining of human dignity.¹⁹ As Abdel-Raheem²⁰ points out, cognitive context models or the worldview that emerges from our standpoint control all speech acts. In this light, one can understand that the speech that we use causes harm which in turn affects our speech; hate speech creates a vicious cycle that is shaped by and simultaneously shapes our cognitive contexts.

Accordingly, for Carlson²¹ Hate speech causes psychological and emotional harm to the target population. Adding to this narrative, Butler²² points out that speech injury renders its targets without a context of where they are as well as out of control. Similarly, Harell²³ focused on how hate speech affects the equal ability of people to enjoy their rights as citizens. The people on the other end of hate speech may lose their will or opportunity to express themselves, experiencing their worth and dignity under attack.²⁴ As Parekh²⁵ argues, hate speech does not only lead to public disorder but also affects the participatory potential of its targets. In fact, Matsuda²⁶ calls the tolerance of the speech borne by the targeted population a psychic tax imposed on those least able to pay. Hate speech silences its targets, can destroy their self-esteem, as well as restrict their freedom of movement and

¹⁷ Gelber, “Differentiating Hate Speech,” 7.

¹⁸ Katharine Gelber and Luke McNamara, “Evidencing the Harms of Hate Speech,” *Social Identities* 22, no. 3 (2016): 2.

¹⁹ Gelber and McNamara, “Evidencing the Harms of Hate Speech,” 2.

²⁰ Ahmed Abdel-Raheem, “Do Political Cartoons and Illustrations Have Their Own Specialized Forms for Warnings, Threats, and the like? Speech Acts in the Nonverbal Mode,” *Social Semiotics* 33, no. 1 (2020): 23.

²¹ Carlson, “Hate Speech as a Structural Phenomenon,” 2.

²² Davids, “On the (in)Tolerance of Hate Speech,” 3.

²³ Davids, “On the (in)Tolerance of Hate Speech,” 3.

²⁴ Gelber and McNamara, “Evidencing the Harms of Hate Speech,” 14.

²⁵ Gelber and McNamara, “Evidencing the Harms of Hate Speech,” 14.

²⁶ Cornwell and Orbe, “Critical Perspectives,” 80.

association, according to Gelber and McNamara.²⁷ Besides, the harms of hate speech are more potent because of their endurance instead of ephemerality.²⁸ A hate speech may be uttered once but it echoes infinitely. 'Shaking it off' is not feasible due to its consequential harm. However, Butler²⁹ warns that viewing hate speech as an illocutionary speech act blinds us to the nuance in its interpretation, and would therefore, be counter-productive in its identification and eradication. This is because when one assesses such speech as harmful in itself, one fails to recognize the speaker, their context, and the motivations behind their use of that speech. Therefore, hate speech is harmful in both consequential and constitutive senses, wherein one is dependent on the other.

Stuck in this quicksand of debate around hate speech, its expression is often problematic for believers in the idea of free speech, according to Owen.³⁰ Nevertheless, the most popular discourses of hate speech generally revolve around a need to curb or at least regulate it. Consequently, Butler³¹ advocates in favour of hate speech regulation by pointing out how such utterances resubordinate the already subordinated. Further, even Carlson³² highlights that hate speech is not only a mirror to existing social relations, but also a reinforcer of the addressed person's subordination. With its power to mark someone as inferior, it reaffirms pre-existing power disparities, normalizes them, and makes the harms caused by it invisible to the naked eye.³³ Inequality, therefore, gets institutionalized through the process of hate speech.³⁴ However, as Davids³⁵ argues using Locke's perspective, people's minds and the ideas that reside there cannot be repressed by regulating their speech. Laws can offer a remedy for violation through punishment but cannot erase the root cause of that violation.³⁶ This strand of hate speech regulation is one of the most important factors contributing to its web of opacity. This is because firstly, there is no unanimity concerning its regulation-free speech supporters believe that it is a violation of people's

²⁷ Gelber and McNamara, "Evidencing the Harms of Hate Speech," 2.

²⁸ Gelber and McNamara, "Evidencing the Harms of Hate Speech," 2.

²⁹ Suzanne Whitten, "A Recognition-Sensitive Phenomenology of Hate Speech," *Critical Review of International Social and Political Philosophy* 23, no. 7 (2018): 5.

³⁰ Hatfield, Schafer, and Stroup, "A Dialogic Approach," 42.

³¹ Davids, "On the (in)Tolerance of Hate Speech," 4.

³² Carlson, "Hate Speech as a Structural Phenomenon," 3.

³³ Carlson, "Hate Speech as a Structural Phenomenon," 3.

³⁴ Carlson, "Hate Speech as a Structural Phenomenon," 3.

³⁵ Davids, "On the (in)Tolerance of Hate Speech," 7.

³⁶ Davids, "On the (in)Tolerance of Hate Speech," 7.