Abstract

“The rights to freedom of expression, equality and freedom from discrimination are universal and mutually reinforcing. They transcend ethnic, racial and cultural specificities. It does mean that censorship is not only a violation to freedom of expression. It also violates the right to equality and to be free from discrimination. Hate speech and incitement to violence strives on censorship,”

One of the most celebrated achievements of the Kenyan constitution promulgated on 27th August 2010 was the chapter four on the Bill of Rights which entails a list of the most important rights of the citizens of the country. The purpose of these bills of rights is to protect those rights against infringement by the government thus most fundamental in Kenya making the new constitution effective. Thus the Kenyan Constitution forms one of the underlying sources of research at hand. Freedom of expression on the other hand is a fundamental human right guaranteed in the Kenyan Constitution under Article 33, International as well as regional human rights instruments and treaties as per Article 2(5)and (6) of the Kenyan Constitution,2010. These human rights treaties, however, anticipate at least two circumstances subsequent to which states may make interventions in respect of the absolute exercise of the right to freedom of expression. First, the state has the right to impose limitations on the right to freedom of expression, and various types of expressions that have different levels of protection for them; Moreover for a limitation to be allowable it must be provided for by law; it must pursue a legitimate purpose; and such interference must be necessary in a democratic society Legitimate purpose for restrictions of freedom of expression should be clearly and narrowly defined to ensure that they are not overbroad, and do not restrict legitimate speech or go beyond the scope of harmful speech.