

Hate Speech and Human Rights in Globalized Society

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1. Introduction

“Hate speech defames, belittles, or dehumanizes a [group of people or person] on the basis of certain inherent properties—typically race, ethnicity, gender, or religion.”¹ In Japan, recent rise of racism and ultra-nationalistic campaigns against ethnic Koreans residing within the country called “*Zainichi* Koreans”² caused “domestic and international protests over a wave of hate-filled demonstrations and online abuse.”³ Hate speech in Japan against *Zainichi* Koreans became particularly visible in 2013 when large nationalist groups took to the streets in major cities, including Tokyo and Osaka, to express their hatred of *Zainichi* Koreans. Demonstrators shouted such phrases as “you Koreans are cockroaches!” and advocated for the extermination of “all Koreans, good or bad.”⁴ Indeed, Japanese authority in its report shows that there were at least 1,152 hate-based demonstrations between April 2012 and September 2015.⁵ There have been long-existing prejudice and discrimination against *Zainichi* Koreans

¹ George Lakoff, “What Is Hate Speech?,” *George Lakoff*, September 14, 2017, <https://georgelakoff.com/2017/09/14/what-is-hate-speech/>

² The usage and scope of *Zainichi* Korean may vary depending on the context. Here, it is mainly referring to those who came or were brought to Japan during Japan's colonial rule of the Korean peninsula and to their descendants Yasunori Fukuoka, *Lives of Young Koreans in Japan*, (Trans Pacific Press, 2000), 3–12 and 21–41, and Tomomi Yamaguchi, “Xenophobia in Action: Ultrnationalism, Hate Speech, and the Internet in Japan,” *Radical History Review* 2013, no. 117 (Fall 2013): 100-101. See also Soo im Lee, “Diversity of *Zainichi* Koreans and Their Ties to Japan and Korea,” Afrasian Research Centre, Ryukoku University (2012) <http://afrasia.ryukoku.ac.jp/publication/upfile/WP008.pdf> (accessed December 17, 2017), 2 (describing historical background of *Zainichi* Koreans).

³ Shaun O’dwyer, “Japan Doesn’t Need to Criminalize Hate Speech,” *The Japan Times*, September 20, 2017, Accessed December 11, 2018, https://www.japantimes.co.jp/community/2017/09/20/voices/japan-doesnt-need-criminalize-hate-speech/#.XBBE3B_grcs.

⁴ Center for Human Rights Education and Training, Ministry of Justice, “Heito supiiichi ni kansuru jittai chosa hokokusho [Report of the Survey about Actual Condition of Hate Speech]” 62 (2016), <http://www.moj.go.jp/content/001201158.pdf> (Japan) [hereinafter Ctr. for Human Rights Report] See also Julian Ryall, “Japan Conservatives: Hate Speech Goes Too Far,” *Deutsche Welle*, September 7, 2013, <http://www.dw.com/en/japan-conservatives-hate-speech-goes-too-far/a-16938717>, and Yasuko Morooka, “Heito supiiichi towa nanika [What is Hate Speech]” 2 (2013).

⁵ Center for Human Rights Report, 33 (2016), <http://www.moj.go.jp/content/001201158.pdf> (Japan) [hereinafter Ctr. for Human Rights Report]. See also “Heito Supiiichi Kanren Demo 1152 ken, Hatsu no Jittai Chosa [Hate Speech Related Demonstration is revealed 1152 cases—Ministry of Justice Held a Survey for the First Time],” *Nihon Keizai Shimbun*, March 30, 2016; Yuki Nikaido, “Heito supiiichi 3 nen han de 1152 ken—seifu ga hatsu no chosa [1152 Hate Speech Cases in 3.5 Years—The Japanese Government Held a Survey for the First Time],” *Asahi Shimbun*, March 29, 2016, <http://archive.fo/pNdO3>; “Heito supiiichi kanren demo 1152 ken [Hate Demonstrations are revealed 1152 cases—Ministry of Justice Held a Survey for the First Time],” *Nihon Keizai Shimbun*, March 30, 2016, https://www.nikkei.com/article/DGXLASDG30H74_Q6A330C1CR8000/. Martin points out it is likely “a conservative estimate, and the number of instances of lower levels or more individual forms of hate speech is likely several multiples of this number.” Craig Martin, “Striking the Right Balance: Hate Speech Laws in Japan, the United States, and Canada,” *Hastings Const. LQ* 45, no.3 (2018): 461.

in Japanese society but recent heightened political and societal tensions between Japan and Korean peninsula as well as spread of the Internet surface this discrimination in more visible way.⁶

This spread of the ultra-nationalism, xenophobia and extremism is global phenomena. It is critical to consider how to regulate hate speech as it is not just “mere speech” by an individual these days but often has become an industry for the racist right. In this digital age, hate groups have gained real power to deprive others of rights to speech by using the media and the Internet. Most importantly, as legal philosopher Jeremy Waldron mentions, hate speech deprives the targeted people of “the assurance that the society regards them as people of equal dignity” and their daily life with peace.⁷ In the end, it leads the harm to “the dignitary order of society” in which everyone, not only those targeted group of hate speech, benefits in everyday life.⁸ We see hate speech and crimes have also become rampant in many Asian countries and societies that are getting more culturally diverse in the context of history and the globalization. In this context, it is critical to explore the way to regulate the hate speech to keep and nurture our free and equal society with diversity, tolerance and inclusion.

This paper, based on the interviews of various actors, including scholars, lawyers, activists, and government officers,⁹ will examine the hate speech regulation in Japan with international human rights law perspective, which may inspire the discussion on how society can combat against the hate speech in Asia and other regions.

2. Hate Speech Regulations in Japan

International law has developed the standards against hate speech on the basis that it undermines the rights of others to equality or to freedom from discrimination as well as it may escalate to genocide, one of the most serious shapes of human rights violation. Although the Japanese government ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)¹⁰ which also calls for the criminalization of hate speech as it claims the criminalization of hate speech in its article 4, Japan made reservations on the

⁶ A number of xenophobic groups have emerged since mid-2000s. They call themselves “Active Conservative.” In addition to the heightened history debate with South Korean and abduction issue with North Korea.

⁷ Michael W. McConnell, “You Can’t Say That—‘The Harm in Hate Speech’ by Jeremy Waldron,” *The New York Times*, June 22, 2012, <https://www.nytimes.com/2012/06/24/books/review/the-harm-in-hate-speech-by-jeremy-waldron.html>, and Jeremy Waldron, *The Harm in Hate Speech*, (Cambridge, Harvard University Press, 2012), 39.

⁸ Waldron, 92.

⁹ The Asia Leadership Fellowship Program 2017 helped me a lot in carrying out this research. I extend my deep appreciation to all those who worked for the program, International House of Japan and Japan Foundation Asia Center for providing me with precious opportunities to participate in lectures and fieldworks and also to the distinguished fellows for giving wonderful comments and feedbacks to my research.

¹⁰ UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195. UN Treaty Collection, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&clang=_en (accessed October 27, 2017).

article and has refrained from taking legal measures against hate speech for long.¹¹ Despite repeated recommendations by the UN Committee on the Elimination of Racial Discrimination (CERD) that the Japanese government relinquish its reservation of Article 4 of the ICERD and punish hate speech,¹² a report by the Japanese government submitted to the CERD in 2013 claimed that racial discrimination in Japan is not a large enough problem and that legal action is not necessary.¹³

Therefore, despite the situation, there has been no effective regulation of discriminatory speech and hate speech fell in a legal limbo. The current Japanese criminal code punishes defamation, personal insults, and forcible obstruction of business as crimes. However, the crime of “forcible obstruction of business” (Art. 234) is not directly applicable to mere speech which does not constitute hindrance of business activities.¹⁴ Defamation (Art. 230) and insults (Art. 231) are only punishable where a victim can be specifically identified, and these categories do not apply to general groups such as ones categorized by race, nationalities and ethnicities.¹⁵ Also, defamation under the civil code (Art. 723) is only applied when a specific group or individual is targeted. Consequently, current Japanese law only regulates cases in which victim(s) can be specifically identified and hate speech or rallies

¹¹ The Japanese government insists the Article 4 of ICERD does not sit well with the strong protection of freedom of expression under the Japanese constitution (Article 21).

¹² UN Committee on the Elimination of Racial Discrimination (CERD), *Concluding observations of the Committee on the Elimination of Racial Discrimination on the Prevention of Racial Discrimination to the combined First to Second reports of Japan*, 2001, CERD/C/304/Add.114, and UN Committee on the Elimination of Racial Discrimination (CERD), *Concluding observations of the Committee on the Elimination of Racial Discrimination on the Prevention of Racial Discrimination to the combined Third to Sixth reports of Japan*, 2010, CERD/C/JPN/CO/3-6.

¹³ *Seventh, Eighth, and Ninth Combined Periodic Report by the Government of Japan under Article 9 of the International Convention on Elimination of All Forms of Racial Discrimination* 20, The Government of Japan (January 2013), <http://www.mofa.go.jp/mofaj/files/000023045.pdf>. It says, “The Government of Japan does not believe that, in present-day Japan, racist thoughts are disseminated and racial discrimination is incited, to the extent that ... legislation to impose punishment against dissemination of racist thoughts and other acts should be considered even at the risk of unduly stifling legitimate speech.”

See also, “Justice Minister Criticizes Hate Speech in Japan but Won't Punish Offenders,” *The Asahi Shimbun*, May 10, 2013. http://ajw.asahi.com/article/behind_news/social_affairs/AJ201305100069.

¹⁴ Keihō [Pen. C.] 1907, art. 234 (Japan) (“A person who obstructs the business of another by force shall be dealt with in the same manner as prescribed under the preceding Article”).

¹⁵ Keihō [Pen. C.] 1907, art. 230, no. 1 (Japan) (“A person who defames another by alleging facts in public shall, regardless of whether such facts are true or false, be punished by imprisonment with or without work for not more than 3 years or a fine of not more than 500,000 yen”). Keihō [Pen. C.] 1907, art. 231 (Japan) (“A person who insults another in public, even if it does not allege facts, shall be punished by misdemeanor imprisonment without work or a petty fine.”). The object of these crimes is to protect “honor of people.” People in this case include “natural person,” “corporation (legal person),” “organization without corporate status.” However, they don’t include general groups (Daishin’in [Sup. Ct.] Mar. 24, 1926, 5 Daishin’in Keiji Hanreishū [Daihan Keishū] 117 (Japan)). See also Takahiro Akedo, “Heito supiichi taisakuho ‘yoto an’ ni tsuite kangaeru—‘tekiho kyoju’ yoken ha naze okashiinoka [Thinking about the Anti-Hate Speech Law Proposal by the Ruling Parties—Why the “Legal Resident” Condition Is Inappropriate],” *Synodos* (April 25, 2016), <http://synodos.jp/politics/16944>.

targeting “*Zainichi* Koreans” or other minorities in Japan in general are not prohibited even if they are unbearably derogatory and insulting.

However, after the recommendation of the UN Human Rights Committee and the CERD asking the Japanese government to take measures to curb hate speech in 2014, the Japanese government in response enacted its first law against hate speech in May 2016, “Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan (hereafter referred to as Hate Speech Elimination Act).”¹⁶ The Act declares that unfair, discriminatory speech and behavior against people who are legally residing in Japan and who are from or whose ancestors were from outside of Japan is not tolerated and obligates the government to implement measures to eliminate such speech and behaviors. However, Hate Speech Elimination Act is not exactly in alignment with those international standards and recommendations as the scope of the law is limited to specifically protect foreign legal residents and without the provisions on the punishment of a person who displays unfair, discriminatory speech and behavior. Nevertheless, since the enactment of the anti-hate speech law, xenophobic groups have held fewer rallies and used less threatening language.¹⁷

Moreover, the law may also “incentivize a trend in the courts to enforce existing... laws more strictly against...threatening anti-minority activities, online and off.”¹⁸ In fact, the Yokohama District Court touched on the new Hate Speech Dissolution Act and banned planned hate speech rally in Kawasaki City in June 2016. The judge said hate-fueled rallies are illegal actions that violate personal rights and ruled that if there is significant illegality in the action, it falls outside the scope of the constitutional protection of free speech and freedom of assembly. In addition, the Act seems to encourage local initiatives with several local governments now working to use the ordinance to curb the hate speech. At least, it was a meaningful leap for the government to take a “legal measure” which clearly shows its official stance against hate speech. So, what were the impetuses behind the development of the law, which may also have made the law effective at certain points?

¹⁶ The Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan (Act No. 68 of 2016) (Provisional Translation)
<http://www.moj.go.jp/content/001199550.pdf>.

¹⁷ “A Year after Enactment of Hate Speech Law, Xenophobic Rallies Down by Nearly Half,” *The Japan Times*, May 22, 2017. <https://www.japantimes.co.jp/news/2017/05/22/national/social-issues/year-enactment-hate-speech-law-xenophobic-rallies-nearly-half/#.WmZ0KaiWZPY>. The article says, “The number of xenophobic rallies in which ultra-right-wing groups use discriminatory language has dropped by nearly half in the 11 months since the Diet enacted a law to deter hate speech, the National Police Agency said.”

¹⁸ O’dwyer, “Japan Doesn’t Need to Criminalize Hate Speech.”

3. Legal, Political and Social Impetuses to Push the Development of the Anti-hate Speech Law Forward

One of the most significant issues is the Kyoto Korean School attack case in which the school of residential Koreans in Japan was attacked by hate groups in 2009 and 2010 and Kyoto Korean School filed a civil lawsuit against the participants of these demonstrations.¹⁹ On October 7, 2013, the initial ruling of the case at the Kyoto District Court unprecedentedly held that the hate rallies around the school were “illegal” as the actions “constitute racial discrimination as defined by the ICERD.”²⁰ It ruled the hateful rallies were not protected as free speech and that the group was no longer allowed to stage their hateful protests against the Kyoto Korean School with paying the school more than 12 million yen (approximately \$126,400) in compensation for the protests that took place in 2009 and 2010. This unprecedented Kyoto District Court ruling was upheld in July 2014 at the Osaka High Court and also affirmed by the Supreme Court in December 2014. The case made seriousness of hate speech visible to the media, activists and ordinary citizens, which made it difficult for the government to deny the reality that hate speech became rampant in 2013.

Until then, the Japanese judiciary had often been criticized for not seriously considering international human rights treaties ratified by Japan in their judgments.²¹ In this context, international law scholars emphasize that the Kyoto District Court ruling is significant for the interpretation of domestic law in light of international law.²² The Kyoto Korean School ruling, referring to the ICERD and condemning racism, has made the issue more universal, behind which there might have been a positive change of judicial attitude toward international law. Moreover, the universality in the ruling has helped make it not only an issue about *Zainichi* Koreans but also concerns of everyone in society, pushing the majority of Japanese become major actors of the anti-racism movement, making this anti-racism movement different from previous minority-led movements. Therefore, Kyoto Korean School Attack Case has a great impact on the development of anti-hate speech law in Japan, or at least on the empowerment of anti-hate speech movement as it internalized the international human rights law.

¹⁹ The school filed criminal case as well but the court on this civil case issued more impactful decision. Another work of the author examine the case in more detail: Hatano Ayako, “The Internalization of International Human Rights Law: The Case of Hate Speech in Japan,” *The New York University Journal of International Law and Politics* 50 (2018): 637–654.

²⁰ Kyoto Chihou Saibansho [Kyoto District Ct.] October 7, 2013, Heisei 22 (wa) no. 2655, 2208 Hanrei jihu [Hanji] 74 (Japan).

²¹ Yuji Iwasawa, *International Law, Human Rights, and Japanese Law: The Impact of International Law on Japanese Law*, (Oxford: Oxford University Press, 1998), 232.

²² To apply international law in Japanese national courts, domestic effect and domestic applicability (direct applicability or self-executing) are important. Article 98(2) of the Constitution of Japan provides that “treaties concluded by Japan and established laws of nations shall be faithfully observed.” Nihonkoku Kenpō [The Constitution of Japan] art. 98. Consequently, these treaties enter the domestic legal system without the need of special legislative procedures. Koji Teraya, “Heito supichi jiken [Hate Speech Case],” *Jurist* 1466 (2014): 292–3.

Not only the judicial rulings but social movements were important towards legal and policy change. The main actors in the anti-racism movements may be categorized into three groups. Firstly, the network of NGOs which has made historic efforts for the elimination of the racial discrimination brought the local issue into the international realm, but also delivered the universal standard of hate speech and racial discrimination into the local movement against hate demonstrations through study seminars, gatherings, and collaborative advocacy to the UN and the government.

Secondly, we should not overlook the importance of local communities who are targeted by hate speech themselves and the allies to fight against hate speech with them. For example, in Kawasaki, a city with a large ethnic Korean population, local residents took a strong initiative to counter the hate rallies.²³ Choi Kang-ija, a 44-year-old third generation Korean resident of Japan who lives in Kawasaki, spoke about how the hate speech destroyed their daily life and harmed her child, family and community, and called for regulation of the hate speech at the Committee on Judicial Affairs at the National Diet, which was clearly based on the idea of universalism of human rights.²⁴ It should be also noted that more than one hundred local governments across the country submit petitions to the government to curb hate speech, many of which referred to the recommendations from international human rights treaty bodies—another sign of the momentum behind Japan's anti-hate-speech movement.²⁵

The third group is so-called “New Social Movement” in Japan.²⁶ There are many people who were not initially interested in traditional social movements but have actively engaged in anti-racism rallies and campaigns since around 2013. The Internet has played a big role in involving those “ordinary people” into anti-racist rallies and spreading the movement throughout Japan. Those recently engaged in demonstrations were connected loosely and flexibly through online networks and participated in random demonstrations and awareness raising campaigns against racial discrimination, which actually made a big wave and social trend against hate speech.²⁷ According to *Aljazeera*, “the culmination of activists’ efforts, in

²³ Jidai no Shotai Shuzaihan, Kanagawa Shimbun, *Heito demo wo tometa machi – Kawasaki Sakuramoto no hitobito* [a town where hate demonstrations are ceased—people in Sakuramoto, Kawasaki], (Tokyo: Gendaishichoshinsha, 2016), 88.

²⁴ Ibid.

²⁵ Daniel Krieger, “Japan Combats Rise in Hate Speech,” *Aljazeera*, November 30, 2015, Accessed December 10, 2017, <http://america.aljazeera.com/articles/2015/11/30/japan-encounters-rise-in-hate-speech.html>.

²⁶ Eiji Oguma, “A New Wave against the Rock: New Social Movements in Japan since the Fukushima Nuclear Meltdown,” *The Asia Pacific Journal Japan Focus* (July 1, 2016) <http://apjjf.org/2016/13/Oguma.html> (accessed January 22, 2018).

²⁷ For example, on September 22, 2013, more than 2,000 people participated in “the Tokyo Anti-Discrimination March (*Sabetsu Teppai Tokyo Daikōshin*)” campaigning against recent hate speech marches. The movement was diversified with participation from sexual minorities and the disabled.

See also “Anti-hate Speech March Fills Streets around Shinjuku,” *The Mainichi*, September 23, 2016. <http://mainichi.jp/english/english/newsselect/news/20130923p2a00m0na010000c.html>; and “Sabetsu Teppai Tokyo Daikōshin no Daiippō Repōto [First report of March on Freedom in Tokyo],” *Independent Web Journal*, <http://iwj.co.jp/wj/open/archives/102809>.

collaboration with policymakers and human rights workers” with the support of public opinion, “came in May 2016, when Japan passed its first national ban against hate speech.”²⁸

4. Conclusion

As local, national, and international condemnation of hate speech grew, efforts to crack down on hate speech expanded in Japan. As the Kyoto Korean School case proceeded, and hate speech movements and countermovements become violent, there became concerns and interests rising among lawmakers. The government which was not initially passionate about the anti-hate speech bill finally changed its attitude and enacted its first anti-hate speech law in June 2016 and is now engaging in various campaigns to raise public awareness based on this law. Here, we see the importance of the government to send a message of intolerance for discrimination, which could discourage haters and support the civil-society activism against racism. In sum, judicial rulings internalizing international human rights law as well as the rise of social movements against hate speech in society pushed forward the development of the anti-hate legislation in Japan. The internalization process is a combination of the bottom-up human rights movement based on the locality and the universal human rights-based movement that has provided an impetus in advancing legal development against hate speech in this case. I hope this study provides an example to explain how society can combat hate speech to build a multicultural society in which everybody can live their own life with dignity.

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²⁸ Vivian Shaw, “How Fukushima Gave Rise to A New Anti-Racism Movement,” *Aljazeera*, March 12, 2017. <http://www.aljazeera.com/indepth/features/2017/03/fukushima-gave-rise-anti-racism-movement-170310103716807.html>.