

Criminal law approaches to combatting sexist hate speech in Spain

AG AboutGender
2025, 14(28), 95-114
CC BY

Beatriz Souto Galván

University of Alicante, Spain

Abstract

This article examines the concept of sexist hate speech, analysing its legal regulation and judicial enforcement within the Spanish legal framework while situating it in the broader international and European context. It highlights the evolving interpretation of hate speech offenses following the 2015 reform of the Spanish Penal Code, which incorporated gender as a protected category under Article 510. Nevertheless, judicial case law continues to reflect ambiguities in the distinction between “sex” and “gender”, resulting in inconsistent legal interpretations and outcomes. The study explores the tensions between freedom of expression and the need to combat gender-based discrimination, addressing how courts have struggled to delineate the threshold between offensive speech and unlawful hate speech. By analysing landmark judicial cases, the article identifies shifts in the conceptualization of sexist hate speech, particularly in relation to the digital sphere and intersectionality. The growing influence of online platforms in the dissemination of gendered hate speech is examined, along with the implications of the European Union’s Digital Services Act and other regulatory measures. The article concludes by proposing strategies to strengthen the legal framework while safeguarding fundamental rights, emphasizing the need for a comprehensive approach that integrates legal, educational, and technological measures to effectively address the structural and intersectional nature of sexist hate speech.

Keywords: hate speech, freedom of expression, symbolic violence, gender-based discrimination.

Introduction

Freedom of expression is a cornerstone of democratic societies, enshrined in international and regional human rights instruments, including Article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Recognised as a preferential right within the framework of fundamental rights (Climent Gallart, 2016, p. 4), it plays a crucial role in ensuring pluralism, public debate, and governmental accountability. However, it is not absolute and must be balanced against other protected legal interests, particularly in the regulation of hate speech.

The United Nations Strategy and Plan of Action on Hate Speech defines hate speech as:

Any kind of communication, whether oral, written, or behavioural, that attacks or uses pejorative or discriminatory language with reference to a person or a group based on who they are, that is, based on their religion, ethnicity, nationality, race, colour, descent, gender, or other identity factors (United Nations, 2022).

Despite the growing recognition of hate speech as a legal issue, international law lacks a unified definition, leading to divergent legal interpretations and enforcement challenges (Rollnert Liern 2019, p. 85). The Council of Europe offers one of the most widely cited definitions, describing hate speech as “all forms of expression that spread, incite, promote, or justify racial hatred, xenophobia, antisemitism, or other forms of intolerance” (Council of Europe, Recommendation No. 97(20)). Over time, this definition has expanded, as reflected in Recommendation No. 15 of the European Commission against Racism and Intolerance (ECRI), which broadens its scope to include incitement to humiliation, discrimination, or stigmatization based on race, ethnicity, religion, sex, gender, sexual orientation, and other protected categories (Alastuey Dobón, 2024, p. 150).

Unlike the ICCPR, the European Convention on Human Rights (ECHR) does not explicitly prohibit hate speech. However, the European Court of Human Rights (ECtHR) has developed a framework to classify incitement to hatred into two distinct categories (Lilliendahl v. Iceland, 2020). The first encompasses the most extreme forms of incitement, which the ECtHR considers incompatible with the fundamental values of the ECHR. Such expressions fall under Article 17, which prohibits the abuse of rights, and are therefore entirely excluded from the protection granted by Article 10 on freedom of expression. The second category includes less severe forms of hate speech, which are not automatically excluded from Article 10 protections. However, the Court has recognised that

States have a margin of appreciation to impose restrictions, provided they meet the principles of necessity and proportionality in a democratic society (Placín Vergillo, 2024, p. 92).

The digital revolution has further complicated the boundaries between freedom of expression and hate speech regulation. Social media has amplified hate speech, increasing online hostility and prompting stricter legal responses. This phenomenon is closely linked to what some scholars describe as the chilling effect, where individuals self-censor to avoid legal consequences, and the silencing effect, where targeted groups withdraw from public debate due to hostility (Alastuey Dobón, 2024, p. 179). These effects are particularly pronounced in the context of sexist hate speech, which disproportionately affects women in politics, academia, and the media.

In the European Union (EU)¹, hate speech regulation provides a common framework criminalizing incitement to hatred and violence, particularly in the digital sphere. However, Spain's hate speech laws extend beyond EU standards, with Article 510 of the Spanish Penal Code imposing broader sanctions, including penalties for expressions that foster hostility, even in the absence of direct incitement to violence or discrimination.

As Correcher Mira (2020, p. 179) points out, the broadening of hate speech definitions in criminal law has led to concerns about its instrumentalization, raising debates on whether these measures may unduly restrict free expression. To address these concerns and establish a clearer legal framework, hate speech must be defined through three key elements, as outlined by Teruel Lozano (2018, p. 40):

- a) A particularly vulnerable social group, identified by race, ethnicity, religion, gender, or sexual orientation, among others. The structural inequality affecting this group enables the construction of exclusionary discourse.
- b) Offensive content, targeting a significant characteristic of the group. This includes insults, humiliation, or threats, as well as incitement to violence or discrimination, provided it creates a real and imminent risk of such acts occurring.
- c) Direct intentionality, both in the offensive act itself (insulting, humiliating, inciting) and in the specific motivation, meaning that the action is carried out precisely because of the identity of the targeted group.

¹ The main EU legal instrument on hate speech is the Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia through criminal law. In January 2024, the European Parliament once again urged the Council to adopt measures to combat hate speech and hate crimes within the EU. The draft report calls for progress in classifying hate speech and hate crimes as "EU crimes", a process that has been stalled in the Council since 2022. MEPs emphasize the need to protect all individuals and groups who may become targets of hate, ensuring that freedom of expression is not misused as a shield for hate speech and hate crimes. They also advocate for an "open" approach, allowing for the assessment of suspected hate crimes based on their contextual circumstances.

While this framework provides a foundation for addressing hate speech, certain forms of discriminatory discourse remain insufficiently regulated. In particular, sexist hate speech has often been overlooked in legal responses, as most frameworks have historically prioritized race, ethnicity, and religion. The inclusion of “gender” as a protected category in Spanish hate speech legislation (Article 510 of the Criminal Code) represents a significant step forward, yet challenges remain regarding its interpretation and enforcement.

Moreover, the growing influence of anti-gender movements has fuelled a backlash against legal measures to combat sexist hate speech. These movements frequently frame hate speech laws as threats to free speech, using digital platforms to spread misogynistic narratives under the guise of “ideological resistance” (Alastuey Dobón, 2024, p. 153). The normalization of such rhetoric not only weakens legal protections against gender-based discrimination, but also reinforces the structural barriers limiting women's participation in public life.

This article examines the legal treatment of sexist hate speech, focusing primarily on its regulation within Spanish law, while also referencing the international and European framework. It explores the challenges in defining and prosecuting sexist hate speech in Spain, its impact on women's rights and public discourse, and the growing role of digital platforms in its dissemination and regulation. By addressing these issues, this study highlights the urgent need for legal clarity and institutional commitment to combat sexist hate speech.

Sexist hate speech

Sexist hate speech is not merely an isolated act of hostility but a mechanism that reinforces systemic inequalities and sustains patriarchal power structures. By perpetuating harmful gender stereotypes, it contributes to a broader culture of discrimination, exclusion, and violence against women. Unlike other forms of hate speech, sexist hate speech has historically been underregulated, despite its widespread impact in digital and offline spaces. The following sections will explore its definition, structural characteristics, and legal implications.

Defining Sexist Hate Speech

The first problem we encounter when attempting to define sexist hate speech is the wide range of terms used to refer to this phenomenon: “hate speech against women”, “gendered hate speech”, “patriarchal speech”, “misogynistic hate speech”, “sexist speech”, among others. However, the term that presents the most controversial and complex perspective is “gendered hate speech.”

This expression is employed both in a broad sense -encompassing hate speech based on sexist motives, sexual orientation, and gender identity- and in a narrower sense, referring specifically to speech that reinforces or attacks traditional gender roles. In this paper, we will use the term *sexist hate speech* to refer specifically to hate expressions of a criminal nature that are based on sex or gender, understood in its traditional binary sense. This definition allows us to delimit the scope of analysis and focus on the legal and normative challenges that arise from such speech in the context of hate crime legislation and international human rights law. Regardless of the terminological issues previously discussed, the most striking fact is that behaviours traditionally considered punishable by European Union Member States or international institutions have not included sex or gender-based motivations. It is only in the last decade that references to sexist hate speech have begun to appear in international human rights instruments. More recently, both the European Union and the Council of Europe have offered more precise and appropriate definitions of this phenomenon.

The Council of Europe (2016) defines sexist hate speech as any form of expression that disseminates, incites, promotes, or justifies hatred on the basis of sex. This definition highlights that sexist hate speech is not merely a collection of offensive words, but rather a structural mechanism that reinforces gender inequality and restricts women's participation in public life. While sexist speech includes expressions that reinforce gender stereotypes and discriminatory norms, it does not necessarily incite hatred or violence. In contrast, sexist hate speech involves explicit hostility, threats, or incitement to discrimination and violence (Richardson-Self, 2018). It functions not only as an individual act but as part of a broader system of oppression, actively sustaining patriarchal power structures and legitimizing gender-based exclusion.

A key aspect of sexist hate speech is its affective dimension, as it relies on emotionally charged language to reinforce discrimination and exclusion. Harsiwi, Fatimah and Alfarisy (2024) emphasize that hate speech against women often relies on derogatory, humiliating, or hyper-emotional rhetoric, reinforcing gender hierarchies and legitimizing acts of hostility. This linguistic strategy not only conveys misogynistic content but also amplifies its psychological impact, fostering fear, anxiety, and self-censorship among targeted women. Furthermore, the authors underscore that affective language increases the social acceptability of misogyny, making it more persuasive and further entrenching gender-based discrimination.

In addition to reinforcing gender hierarchies, misogynistic hate speech is central to the construction of online hate communities. Benassini Félix (2022) notes that misogyny serves as the ideological foundation of digital spaces such as the *manosphere*, where online interactions range from ironic dismissals to explicit calls for harassment and violence against women. These communities not only disseminate hate speech but also amplify it through algorithmic exposure, pushing users toward increasingly radicalized content that normalizes the exclusion and silencing of women in digital public spaces.

Moreover, misogynistic hate speech is often structured around narratives of male victimization, portraying gender equality as a threat to traditional power structures. This discourse positions feminism and female leadership as inherently antagonistic to men, legitimizing attacks against women in politics, media, and activism. This combination of delegitimization and symbolic violence has tangible consequences, from online harassment to the justification of physical aggression, highlighting how digital misogyny can escalate into real-world harm.

The impact of sexist hate speech extends beyond individual victims, shaping broader societal norms and power dynamics. Several defining characteristics highlight its pervasive and multifaceted consequences:

- Dehumanization and contempt: Sexist hate speech often reduces individuals to their gender, fostering perceptions of inferiority and objectification. Terms such as “slut”, “witch”, or “whore” perpetuate harmful stereotypes, positioning women as inherently less valuable or morally corrupt. This dehumanization process can escalate from verbal aggression to the justification of gender-based violence, particularly in online spaces, where misogynistic slurs frequently accompany threats of rape or physical harm.
- Reinforcement of gender stereotypes: By promoting notions of women’s supposed “weakness”, “emotional instability”, or “irrationality” sexist hate speech upholds patriarchal structures that limit women’s agency and rights. This is especially damaging in professional and political environments, where women are often dismissed as incapable leaders. Studies show that female politicians and journalists face significantly higher levels of gendered online abuse than their male counterparts, discouraging their public participation (Döring & Mohseni, 2020).
- Normalization of symbolic violence: Even in the absence of direct physical threats, sexist hate speech constitutes symbolic violence, systematically undermining women’s dignity, autonomy, and societal standing. It is often trivialised as satirical expression, “free speech” or harmless banter, fostering an environment where gender-based hostility is tolerated and justified. The Council of Europe (2023) identifies this normalization as a key factor in sustaining gender inequality, stressing the need for legal and policy interventions.
- Intersectionality with other forms of discrimination: Sexist hate speech often intersects with racism, homophobia, transphobia, and class discrimination, exerting a disproportionate impact on women who face multiple forms of marginalization. Women of colour are more likely to be subjected to racist and sexist hate speech simultaneously, while trans women face gendered violence that delegitimizes their identities. Addressing these compounded forms of discrimination requires a multi-layered legal approach.

- Chilling effect on free expression and participation: The persistent presence of sexist hate speech creates a chilling effect, discouraging women from fully exercising their right to free expression. Many women in politics, academia, and media report self-censorship or withdrawal from online spaces to avoid harassment.

Sexist hate speech as a form of gender-based violence

The legal recognition of sexist hate speech as a form of gender-based violence has gained increasing traction in international human rights law. Several legal frameworks have expanded the definition of violence against women to include psychological and symbolic violence, thereby encompassing hate speech and online misogyny.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and General Recommendation No. 35 affirm that violence against women includes symbolic and psychological violence, which covers sexist hate speech. Similarly, the Istanbul Convention (2011) establishes that psychological harm, including hate speech targeting women, can constitute a form of gender-based violence. At the European level, the Council of Europe Gender Equality Strategy 2024-2029 explicitly links sexist hate speech to structural discrimination, emphasizing the need for intersectional policies that address its compounded impact on marginalized groups. The European Commission against Racism and Intolerance (ECRI) has also recognised “gender” as a protected category in hate speech legislation, aligning with the broader effort to criminalize hate speech based on sex, gender, and gender identity. However, despite these legal advancements, sexist hate speech remains underregulated, as most national and international frameworks have historically prioritized hate speech based on race, ethnicity, and religion.

Beyond legal definitions, sexist hate speech has tangible consequences on women’s participation in public life. The European Union Agency for Fundamental Rights (FRA, 2023) found that 58% of female parliamentarians and 73% of female journalists have been targeted by online sexist attacks, often including threats of death, rape, or physical violence. This chilling effect discourages women from engaging in public discourse, undermining democratic participation.

Addressing sexist hate speech as a form of gender-based violence requires a comprehensive and multi-level response, including stronger legal frameworks, improved enforcement mechanisms, and digital platform accountability. As online misogyny continues to evolve, an integrated legal approach is essential to safeguarding women’s rights and democratic participation.

The role of digital platforms and the rise of anti-gender movements

The proliferation of digital platforms has fundamentally transformed the dynamics of sexist hate speech, making it more pervasive, coordinated, and resistant to regulation. Unlike traditional media, social networks and online forums now enable the rapid and massive dissemination of misogynistic content, often protected by anonymity, which exacerbates the sense of impunity. This transformation is closely intertwined with the rise of anti-gender movements, which strategically exploit sexist and anti-feminist rhetoric to resist advances in women's rights and LGBTQ+ equality. As noted by Arce-García and Menéndez-Menéndez (2022), much of the gender-related discourse circulating on platforms like Twitter (now X), YouTube, and Facebook is not spontaneous but the result of orchestrated campaigns aimed at manipulating public debate and reinforcing misogynistic narratives (p. 14).

A key enabler of digital misogyny is the algorithmic architecture of online platforms. Ging and Siapera (2018, p. 522) emphasize that sexist and anti-feminist content often benefits from algorithmic amplification due to its high engagement rates, embedding sexist hate speech deeply into digital ecosystems. Yet, this amplification is not confined to social media: journalistic practices also contribute. A recent study by Iranzo-Cabrera and colleagues (2024), analysing 63,926 tweets related to Spanish politician Irene Montero, reveals how media outlets sometimes reproduce misogynistic attacks rather than critically reporting on them. The repetition of sexist slurs in headlines and the use of inflammatory framing not only increase the visibility of such narratives but risk legitimizing gender-based hostility.

The ideological stance of journalists also plays a role in framing sexist hate speech. While some explicitly condemn misogynistic discourse, others subtly perpetuate stereotypes that undermine women's political credibility. This creates a feedback loop between social media and traditional media, whereby online attacks are amplified by news coverage, which in turn spurs renewed hostility online. The ethical implications of this cycle highlight the responsibility of media actors in preventing rather than amplifying gender-based violence.

The GENHA Project, funded by the European Union, further illustrates how digital platforms operate as fertile ground for far-right populist movements to disseminate misogynistic and transphobic narratives. The project confirms that algorithmic logics, combined with coordinated user networks, significantly enhance the visibility and impact of these discourses. Beyond direct harassment, digital misogyny frequently manifests through disinformation campaigns, wherein bot networks artificially inflate the reach of sexist narratives, fostering the illusion of widespread social consensus. As Ging and Siapera (2018, p. 523) observe, these dynamics not only distort public perception but intensify the silencing effect, prompting many women to self-censor or withdraw from online spaces altogether.

Empirical evidence reinforces this diagnosis. Döring and Mohseni (2020), in their analysis of 8,000 YouTube comments and 6,844 YouNow comments, found that women were disproportionately targeted with sexist and sexually aggressive remarks. While male content creators often received praise for their skills or ideas, female creators were judged primarily on their physical appearance, thus perpetuating entrenched gender stereotypes. These findings are consistent with Expectation States Theory and Ambivalent Sexism Theory, which explain how gendered hierarchies persist and are reproduced in digital interactions.

In response to the intensification of digital misogyny, the European Union has adopted more stringent regulatory measures. Directive (EU) 2024/1385 explicitly recognises online sexist hate speech as a form of structural discrimination and criminalises specific forms of cyberviolence, including:

- Cyberharassment and cyberstalking, particularly in cases involving coordinated attacks targeting women.
- The dissemination of non-consensual intimate material, recognising the severe psychological and reputational harm involved.
- Cyberflashing, when it results in significant psychological distress.

These developments are complemented by the Digital Services Act (DSA)², which introduces a harmonised framework of due diligence obligations for online platforms and search engines operating within the EU. The DSA establishes specific responsibilities for detecting, removing, and preventing the dissemination of illegal content online, including unlawful hate speech, by requiring platforms to act expeditiously once such content is reported. It explicitly recognises the risk posed by the spread of illegal content -such as incitement to hatred or violence- as a systemic threat to fundamental rights, public discourse, and democratic processes. Platforms designated as Very Large Online Platforms (VLOPs) must conduct annual risk assessments, implement mitigation measures, and ensure independent audits of their content moderation practices. The regulation also seeks to reduce financial incentives for disinformation, guarantee transparency in political advertising, and promote cooperation with trusted flaggers and fact-checkers. In practice, platforms are adopting a range of moderation tools -such as content demotion, warning labels, removal of content, and suspension of accounts- while also establishing accessible and effective mechanisms for users to report illegal content and challenge moderation decisions through out-of-court dispute settlement mechanisms.

² Regulation (EU) 2022/2065 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act).

At the national level, Spain's Article 510 of the Penal Code provides a legal basis for prosecuting hate speech disseminated through digital platforms. Recent rulings by the Spanish Supreme Court have clarified that the "publicity" element required for hate speech offenses includes digital content designed for mass dissemination. Additionally, Article 510(6) mandates the removal or blocking of online content used in the commission of such offenses, aligning with broader European efforts to enhance digital regulation.

Sexist hate speech under the Spanish Penal Code

In operational terms, Spanish courts have tended to use *sex* and *gender* interchangeably, yet the distinction carries concrete legal implications. *Sex* refers to biological characteristics, whereas *gender* denotes socially constructed roles, behaviours, and expectations. This differentiation affects the elements of the offence under Article 510: expressions targeting biological traits fall within sex-based hatred, whereas those attacking women's social roles, autonomy, or visibility constitute gender-based hatred. The latter requires contextual analysis beyond the literal content of the expression.

The Spanish Criminal Code addresses hate crimes through two distinct mechanisms. First, it classifies discriminatory motives, including those based on sex and gender, as an aggravating factor applicable to any crime (Article 22.4). Second, it establishes specific offences rooted in discrimination, explicitly covering sex and gender, particularly in Article 510. The 2015 reform of the Penal Code marked a significant step forward in addressing gender-based discrimination, as it not only incorporated *gender* as a protected category but also expanded the scope of hate speech offences to include expressions that, while not directly inciting violence, contribute to a climate of hostility or discrimination (Marín de Espinosa, 2018, p. 7).

During the legislative process leading to this reform, an amendment was introduced to explicitly include the term *gender* alongside *sex* in Article 510. This modification stemmed from the recognition that *sex*, as a biological category, was insufficient to capture the broader sociocultural dimension of gender. By making this distinction, the amendment sought to enhance legal precision and reinforce protection against discrimination, acknowledging that gender is a social construct rather than a strictly biological condition (Fuentes Osorio, 2024, p. 22).

The inclusion of gender in criminal legislation is therefore essential to address structural discrimination and systemic inequalities that transcend biological distinctions. Recognising gender as a determinant factor in discriminatory practices enables legal provisions to more effectively combat sexist hate speech and other forms of gender-based violence. The amendment to Article 510 was not merely a technical adjustment; it represented a substantive alignment of Spain's legal

framework with contemporary human rights standards, which identify gender as a fundamental axis of discrimination and oppression.

Nevertheless, the amendment to Article 22.4, which introduced gender-based discrimination as a general aggravating factor, has been met with scepticism. Some scholars consider it largely symbolic, arguing that gender discrimination is already encompassed within sex-based discrimination and that existing legislation already provides enhanced protection in cases of gender violence through specific aggravating circumstances (Marín de Espinosa 2018, p. 7). Despite these critiques, the gender-based aggravating factor plays a crucial role in criminal law by acknowledging the structural nature of gender-based violence.

In 2018, the Spanish Supreme Court clarified that this aggravating factor applies when a crime reflects or reinforces structural gender inequality, in line with the principles of the Istanbul Convention (2011). While the Court has recognised that sex-based discrimination can affect both men and women, it has emphasised that the gender-based aggravating factor is specifically linked to patterns of male dominance and power asymmetry over women (Spanish Supreme Court, 2018).

Beyond the aggravating factor, the Spanish Penal Code explicitly criminalises hate speech under Section One of Chapter IV, which addresses offences against fundamental rights and public freedoms. This provision serves as the central instrument in Spain's criminal justice system for combating racism, xenophobia, and all forms of discrimination. From a legal-dogmatic perspective, Article 510 encompasses two distinct categories of offences that must be clearly differentiated in both evidentiary and normative terms (Landa Gorostiza, 2021).

The first category, Article 510(1), criminalises *incitement to hatred or violence* and entails a higher evidentiary threshold, as it requires proof that the expression was capable of creating a real and imminent risk of discrimination or violence against the targeted group. Spanish case law (STS 72/2018) interprets this as a *crime of danger*, focused on the potential to generate a hostile or "pre-criminal" climate. The second category, Article 510(2), addresses *expressions of humiliation, contempt or insult* and constitutes a *result-based offence*, where criminal liability depends on the actual harm inflicted on the dignity or reputation of the victim or group. This provision covers derogatory, defamatory, or slanderous expressions that, although not directly inciting violence, are sufficiently severe to damage the collective dignity of women as a protected group. This distinction has significant procedural implications: while the first category focuses on the *risk* created by the speech act, the second requires proof of *concrete harm*. Judicial practice has gradually acknowledged that sexist hate speech may fall under either provision depending on the context, audience, and communicative intent of the expression.

The 2015 reform of Article 510 thus marked a substantial expansion of its scope by explicitly incorporating *gender* as a protected characteristic and broadening the notion of hate speech to include conduct that contributes to a general climate of hostility or discrimination. However, this

expansion has also sparked legal debate regarding its compatibility with constitutional principles. Critics have questioned the vagueness of certain terms, particularly “hostility”, and warned that an overly broad interpretation might infringe the principle of legal certainty. The Spanish Constitutional Court has upheld the constitutionality of Article 510, while emphasising the need for a restrictive interpretation to safeguard freedom of expression. In this regard, Alastuey Dobón (2024, p. 171) observes that the criminalisation of hate speech in Spain has evolved toward a more expansive model that goes beyond direct incitement to violence and encompasses expressions capable of fostering a “pre-criminal climate”. Nonetheless, Spanish jurisprudence insists that criminal liability must be grounded on a *concrete risk* of discrimination or violence, thereby preventing an unduly broad or subjective application of the provision.

Case Study Analysis of Illegal Sexist Hate Speech

The jurisprudential analysis draws primarily on decisions from lower criminal courts, complemented by selected rulings of the Supreme Court (STS) that exemplify the interpretative evolution of Article 510 CP since the 2015 reform. The 2015 reform marked a turning point by introducing “gender” as a protected category under Article 510 of the Criminal Code, alongside “sex.” However, judicial practice since then has revealed persistent ambiguities in distinguishing between the two grounds. While courts now routinely refer to “gender” as a legal category, they often do so without clarifying whether the hate expression targets individuals based on biological sex or on socially constructed gender roles. This has led to inconsistencies in reasoning: some rulings invoke the term “gender” without a clear analytical foundation, whereas others fail to engage with the gendered dimension of misogynistic speech altogether. The criminalisation of sexist hate speech in Spain has followed a progressive process of consolidation, particularly after the 2015 reform of Article 510 of the Criminal Code, which included gender as a protected category.

This analysis examines the main developments in the application of sexist hate speech offences, with a focus on:

- a) the impact of the 2015 reform on the classification of sexist hate speech;
- b) the ongoing ambiguity in case law regarding the distinction between sex and gender;
- c) the role of digital platforms in spreading hate speech and their legal regulation; and
- d) the integration of an intersectional approach in recent judicial rulings.

Legal framework and challenges before the 2015 reform: the limits of Criminal Law in addressing sexist hate speech

One of the main challenges before the 2015 reform was the inability to prosecute sexist discourse unless it explicitly incited violence. Judicial interpretations required a direct provocation to commit a crime, excluding many deeply discriminatory expressions from the scope of criminal law.

In its 2004 decision (STS 4463/2004), the Spanish Supreme Court ruled that speech perpetuating gender inequality or justifying discrimination was not punishable unless it had a direct and demonstrable link to incitement to violence. This restrictive interpretation significantly limited the possibility of prosecuting misogynistic speech that, while not explicitly advocating violence, contributed to structural discrimination.

A notable exception was the Fuengirola Imam case, in which the dissemination of a book justifying physical punishment of disobedient wives was prosecuted. The court ruled that this message constituted a form of indirect incitement to violence, as it legitimized domestic abuse within religious norms³. However, in the Archbishop of Granada case, where a book titled *Get Married and Be Submissive* was promoted, the court found that, despite its discriminatory nature, it did not pose a serious enough threat to justify criminal prosecution⁴.

These cases illustrate the lack of consensus on what type of misogynistic discourse can be criminalized and demonstrate how the absence of a specific reference to gender in pre-2015 legislation hindered the application of hate speech laws to such expressions.

Evolution and challenges after the 2015 reform: the expansion of hate speech definition from direct incitement to structural harm

One of the most significant developments following the 2015 reform has been the broadening of the concept of hate speech offences. While earlier interpretations required explicit incitement to violence, courts have increasingly recognised that speech can be criminally relevant even when it

³ In this case a religious leader in Spain who published the book *Women in Islam*, in which he justified physical punishment for women as a means of disciplining disobedience. The book explicitly stated that a husband could use a thin rod to strike his wife as long as the act did not leave visible marks or cause significant pain. The judge classified these statements as incitement to violence against groups on the basis of sex, given that gender was not yet included as grounds for hate speech offenses. The ruling considered the balance between religious freedom, including the expression of religious views, and women's right to physical and moral integrity (Article 15 of the Spanish Constitution). However, other statements in the book, which conveyed traditional gender stereotypes, were not deemed criminal as they were interpreted as personal opinions rather than incitement to discrimination, such as: The existence of a supreme authority in the home -obviously the husband- is reasonable to prevent disorder within the family; Rivalry between men and women has turned women into dangerous rivals, rather than respected mothers, wives, and partners; Women's work must be suited to their nature; they must develop their innate skills and abilities.

⁴ The text argued that women should be obedient to their husbands and that submission was an act of generosity and love. Statements such as "many women become unbearable because they do not understand the virtue of submission" generated public outrage, leading feminist organizations and legal experts to call for an investigation into its legality under hate speech laws.

does not directly encourage violent acts, as long as it contributes to the normalization of discrimination, hostility, or social exclusion of a protected group.

In 2017, the Supreme Court reviewed a case, in which a twitter user posted messages celebrating femicide, including statements such as “Let’s double the number of women killed next year”⁵. Initially sentenced to one year in prison, he later received a two-year sentence, as the Supreme Court ruled that his messages, even without explicitly inciting violence, legitimized and encouraged gender-based violence by portraying it as acceptable or desirable.

This case signalled a growing judicial recognition that hate speech is not only harmful when it directly incites violence, but also when it contributes to a broader pattern of structural harm against women. This interpretation was later reinforced in STS 72/2018, in which the Spanish Supreme Court formally established that hate speech does not require an explicit or direct threat to be criminally relevant. Instead, speech can be punishable when it creates a climate of hostility and degradation, making discrimination and violence against a protected group more socially acceptable.

However, despite this legal evolution, some cases continued to expose the limitations of the legal framework. The *Tour de la Manada*⁶ case raised concerns about the lack of recognition of hate speech beyond direct incitement to violence. A website promoting a tour of the locations associated with the 2016 group sexual assault in Pamplona trivialised sexual violence, selling merchandise that mocked the victim and commodified her suffering. Although the court convicted the website creator for crimes against moral integrity (Article 173.1 of the Criminal Code), it did not classify the content as hate speech under Article 510, reasoning that it did not directly provoke violence or discrimination. This case revealed gaps in the law, as the normalization and trivialisation of gender-based violence were still not fully recognised as punishable hate speech.

A key step toward addressing these gaps came with the 2021 Mural Feminista Case, where a man vandalized a feminist mural commissioned by Madrid’s City Council to commemorate International Women’s Day. He painted over the faces of the women depicted, in what the court deemed a deliberate attack on women’s dignity and equality. Unlike in 2018, the court ruled that this was

⁵ This case involved a Twitter user who posted explicitly violent messages about femicide, including statements such as: “53 killed by macho gender violence so far this year. Doesn’t seem many with all the whores around; 2015 will end with 56 women killed; not a great year, but we did our best. Let’s see if we can double that figure next year, thanks; Patricia was a feminist and ended up in a river because women throw themselves into feminism. He also shared an image with the caption, ‘I’ve already abused her, now it’s your turn’”.

⁶ In December 2018, a man created a website promoting a “Tour of the Manada” referring to the group of men convicted of sexual assault during the 2016 San Fermin festivities in Pamplona. The site advertised guided tours of locations linked to the assault and sold items such as decals replicating one of the assailant’s tattoos and replicas of the shirts worn by the group. By doing so, the website trivialised the sexual assault, objectified the victim, and exploited her suffering for profit. The website included a detailed itinerary of the tour showcasing locations tied to the crime and making references to the actions of the perpetrators. It also featured commentary mocking the victim and further commodified her experience. In response, the victim and the Navarre Institute for Equality filed complaints, resulting in charges against the accused for crimes against moral integrity and hate speech (Spanish Supreme Court November 26, 2020).

not just vandalism but a form of symbolic misogynistic hate speech, sentencing the perpetrator to four months in prison under Article 510.2(a) of the Criminal Code.

These cases demonstrate an evolving judicial approach: while earlier rulings focused on direct incitement to violence, courts have progressively recognised that speech and actions that normalize gender-based discrimination and violence can also be criminally relevant.

The role of digital platforms in amplifying sexist hate speech

The digitalisation of public discourse has deeply impacted the manifestation and prosecution of sexist hate speech, forcing courts to adapt their interpretative frameworks to a new communicative landscape. While criminal provisions on hate speech were not originally designed for online contexts, Spanish courts have increasingly addressed cases involving misogynistic expressions disseminated through social media, often without an explicit call to action.

A significant development occurred with the 2022 Supreme Court ruling⁷ on incitement to gender-based violence via online platforms. The case involved a user who persistently posted statements such as “Violence against women is good” and “If your wife doesn’t obey, hit her”. The Court concluded that such repeated and decontextualised messages go beyond the limits of protected speech, even if they do not explicitly incite imminent violence. It recognised that in the digital environment, repetition and virality amplify the harmful effects of hate speech, contributing to the normalisation of violence against women and the erosion of their dignity.

This ruling reflects a shift from a narrow focus on direct incitement toward a broader understanding of hate speech as a discursive practice that can foster a hostile and discriminatory social climate. It aligns with the notion of “pre-criminal climate” referenced in previous case law and scholarly analysis, where the danger lies not in a specific call to violence but in the systematic legitimization of discriminatory ideologies.

Earlier judicial approaches were more cautious. For instance, in cases like the 2017 Twitter Hate Speech Case, courts struggled to balance freedom of expression with the emerging patterns of online misogyny, often requiring a high threshold of intent and direct provocation. By contrast, more recent rulings are gradually recognising the structural and cumulative nature of online hate speech, especially when it targets women as a group.

What emerges from this evolving jurisprudence is a growing awareness that sexist hate speech in the digital age requires new interpretative criteria. Courts are beginning to consider not only

⁷ His posts included statements like: ‘To the rebellious woman: Give her a couple of slaps’; ‘worthless drunk and whorish Spanish women’; ‘They’re not even good enough to be slaves’; ‘The man is responsible for the family, and if the woman doesn’t obey and you don’t hit her, that’s your problem, but the man is responsible for the family’; ‘Whether man or woman, if they attack me, I defend myself’; ‘Violence against women is good’; ‘Violence is not being able to buy a loaf of bread’; ‘Violence is accusations of deserved abuse’; or ‘Violence is not having revenge’.

the content of the messages but also their mode of dissemination, frequency, reach, and potential social effect, particularly in relation to the promotion of gender-based hostility.

Intersectionality in Hate Speech Cases

Another significant development has been the incorporation of an intersectional approach in the application of hate speech laws. Gender-based discrimination often intersects with other forms of exclusion, such as racism and xenophobia, prompting courts to consider multiple factors when assessing hate speech cases.

In STS 77/2025, the Supreme Court convicted an individual who not only insulted and threatened women but also employed racist and xenophobic slurs directed specifically at Dominican women. The ruling highlighted that hate speech does not operate in isolation but reinforces multiple and intersecting forms of discrimination, warranting heightened judicial scrutiny. This cumulative dynamic, in which misogyny intertwines with racial or xenophobic bias, has also been emphasised in feminist legal scholarship. As Richardson-Self (2018, p. 263) argues, misogynistic and racialised hate speech share a mutually reinforcing logic that reproduces hierarchies of domination, rendering intersectional harms particularly resistant to legal redress. The Spanish Supreme Court's reasoning in STS 77/2025, by acknowledging this interdependence, therefore aligns with contemporary theoretical perspectives that conceptualise hate speech as a multidimensional phenomenon rather than a series of discrete discriminatory acts.

The adoption of an intersectional perspective has undoubtedly strengthened judicial responses to hate speech that perpetuates multiple layers of oppression. However, it has also introduced new challenges in determining which expressions are sufficiently severe to justify criminal prosecution.

Conclusions

Sexist hate speech constitutes one of the most insidious forms of symbolic violence, as it perpetuates structural inequalities, reinforces harmful gender stereotypes, and normalizes discrimination and violence against women and gender-nonconforming individuals. As this article has demonstrated, such discourse is not merely a collection of offensive expressions, but a systemic mechanism that sustains patriarchal power structures and legitimizes gender-based exclusion. This study has examined the conceptual, legal, and jurisprudential dimensions of sexist hate speech, with particular attention to the Spanish legal framework. Several key conclusions emerge from this analysis.

The legal recognition of sexist hate speech has evolved gradually. International and European legal instruments initially focused on hate speech related to race, religion, and ethnicity, with sex and gender only recently achieving status as protected categories. The 2015 reform of the Spanish Penal Code marked a significant turning point by explicitly incorporating “gender” as an autonomous ground for protection under Article 510. This reform aligned Spanish law with international commitments, such as the Istanbul Convention, and paved the way for more comprehensive legal responses to hate speech rooted in gender-based hostility, particularly in online contexts where such discourse has intensified in scale and virulence.

Jurisprudential developments reflect both progress and persistent challenges. While Spanish courts have increasingly addressed online hate speech targeting women, they have not always clearly distinguished between sex and gender as legal grounds. Judgments such as STS 72/2018 illustrate the ongoing conceptual ambiguity, with courts invoking “gender context” without articulating whether the discriminatory motive arises from biological sex or socially constructed gender roles. More recent rulings, such as STS 488/2022, show a more accurate application of the reformed legal framework, recognising the expanded scope of Article 510. Nevertheless, the absence of consistent doctrinal clarity hampers the effective protection of victims, and the legal certainty required in criminal law.

The proliferation of digital platforms has amplified the spread and impact of sexist hate speech, requiring the judiciary to adapt its interpretive approach. In a landmark 2022 decision, the Spanish Supreme Court emphasized that repeated online messages legitimizing violence against women—regardless of whether they incite imminent harm—can constitute hate speech when they contribute to a climate of hostility and dehumanization. This jurisprudence reflects a shift from assessing only direct incitement to recognising the cumulative and structural nature of digital misogyny.

Parallel to these judicial developments, new forms of anti-gender discourse have gained prominence in the political arena. Far-right parties and anti-feminist movements have strategically deployed gendered disinformation and misogynistic narratives under the guise of protecting traditional values. These discourses not only undermine gender equality policies, but also normalize violence and hostility against women’s rights defenders.

The consequences of sexist hate speech extend well beyond the digital realm. Empirical studies confirm that sustained online harassment leads to the silencing and withdrawal of women from political, academic, and professional spheres, reinforcing existing structural barriers to equality. Expressions often trivialised as humour or opinion -such as gendered insults, threats, and stereotypes- contribute to a culture in which gender-based violence is minimized, excused, or encouraged.

This analysis underscores the urgent need to strengthen legal, institutional, and societal responses to sexist hate speech. Key priorities include:

1. Promoting coordinated action between governments, digital platforms, and civil society to detect, prevent, and respond to misogynistic discourse in online spaces.
2. Enhancing transparency and accountability in content moderation systems, with particular attention to the algorithmic amplification of gendered disinformation.
3. Advancing public education initiatives that foster critical engagement with gender stereotypes and promote counter-narratives rooted in equality and human rights.
4. Continuously reviewing legal frameworks and jurisprudence to ensure their coherence, efficacy, and alignment with fundamental rights, including freedom of expression and the right to non-discrimination.

Sexist hate speech must be understood not as an isolated communicative act, but as a manifestation of broader power dynamics and structural inequality. Addressing it requires a multidimensional and intersectional strategy that integrates legal precision, judicial coherence, digital regulation, and cultural transformation. Only through sustained and collective effort can we advance toward a democratic society in which dignity, equality, and mutual respect prevail, and where misogyny is no longer tolerated as part of the public discourse. Spain's evolving case law on sexist hate speech, in turn, contributes to the broader European debate on the criminal boundaries of online misogyny and the articulation of gender equality as a constitutional value.

References

- Alastuey Dobón, C. (2024). Discurso del odio criminalizado vs. libertad de expresión: Una fina línea divisoria. En G. Vicente y Guerrero (Ed.), *La libertad de expresión: Avances, límites y desafíos futuros* (149-184). Madrid: Colex.
- Arce-García, S., & Menéndez-Menéndez, M. I. (2022). Inflaming public debate: A methodology to determine origin and characteristics of hate speech about sexual and gender diversity on Twitter. *Profesional de la Información*, 32(1), 1-18 e320106. <https://doi.org/10.3145/epi.2023.ene.06>
- Cabellos Espiérrez, M. A. (2018). Opinar, enaltecer, humillar: respuesta penal e interpretación constitucionalmente adecuada en el tiempo de las redes sociales. *Revista Española de Derecho Constitucional*, n.112, 45-86. <https://doi.org/10.18042/cepc/redc.112.02>
- Climent Gallart, J. A. (2016). Analysis of the origins of freedom of expression as an explanation of its current configuration as an institutional guarantee. *Revista Bolivariana del Derecho*, n.22, 233-253.

- Correcher Mira, J. (2020). Discurso del odio y minorías: redefiniendo la libertad de expresión. *Teoría y Derecho*, n.28, 166-191. <https://doi.org/10.36151/td.2020.016>
- Council of Europe. (2016). Combating sexist hate speech. Gender Equality Strategy. Strasbourg.
- Council of Europe. (2019). Recommendation CM/Rec(2019)1 of the Committee of Ministers to Member States on preventing and combating sexism. 27 March 2019. Strasbourg.
- Council of Europe. (2023). Gender Equality Strategy 2024-2029. Strasbourg.
- Döring, N., & Mohseni, M. R. (2020). Gendered hate speech in YouTube and YouNow comments: Results of two content analyses. *Studies in Communication and Media*, 1(9), 62-88. <https://doi.org/10.5771/2192-4007-2020-1-62>
- European Commission. (2021). Communication from the Commission to the European Parliament and the Council. A more inclusive and protective Europe: Extending the list of EU crimes to hate speech and hate crime. COM(2021) 777 final.
- European Commission against Racism and Intolerance. (2015). General Policy Recommendation No. 15 on Combating Hate Speech. Adopted 8 December 2015.
- European Parliament. (2016). Resolution of 28 April 2016 on gender equality and empowering women in the digital age (2015/2007(INI)).
- Fuentes Osorio, J. L. (2024). Hateful speech: The broadening of hate speech. *Revista Electrónica de Criminología*, 8(2), 1-30.
- Ging, D., & Siapera, E. (2018). Special issue on online misogyny. *Feminist Media Studies*, 18(4), 515-524. <https://doi.org/10.1080/14680777.2018.1447345>
- Harsiwi, W., Fatimah, R., & Alfarisy, F. (2024). Gendered hate: How affective language shapes hate speech against women. *International Journal of Linguistics, Literature and Translation*, 7(12), 17-21. <https://doi.org/10.32996/ijllt.2024.7.12.4>.
- Iranzo-Cabrera, M., Castro-Bleda, M. J., Simón-Astudillo, I., & Hurtado, L.-F. (2024). Journalists' Ethical Responsibility: Tackling Hate Speech Against Women Politicians in Social Media Through Natural Language Processing Techniques. *Social Science Computer Review*, vol.0, n.0., 1-19, <https://doi.org/10.1177/08944393241269417>
- Landa Gorostiza, J. M. (2021). El delito de incitación al odio (artículo 510 CP). *Quo Vadis Azafea. Revista Filosófica*, n.23, 57-81.
- Marín de Espinosa, E. B. (2018). La agravante genérica de discriminación por razones de género (art. 22.4 CP). *Revista Electrónica de Ciencia Penal y Criminología*, n.20, 20-27.
- National High Court of Spain. (2017). Sentence 3/2017, 26 January.
- OSCE/ODIHR. (2009). Hate Crime Laws: A Practical Guide, OSCE Guide.
- Placín Vergillo, F. (2024). El discurso de odio online y su persecución por el Tribunal Europeo de Derechos Humanos. *Revista Internacional de Pensamiento Político, I Época*, vol.19, 87-102.
- Richardson-Self, L. (2018). Woman-Hating: On Misogyny, Sexism, and Hate Speech. *Hypatia*, 33(2), 256-272. doi:10.1111/hypa.12398
- Rollnert Liern, G. (2019). El discurso del odio: una lectura crítica de la regulación internacional. *Revista Española de Derecho Constitucional*, n.115, 81-109. <https://doi.org/10.18042/cepc/redc.115.03>
- Spanish Attorney General's Office. (2019). Circular 7/2019 on Guidelines for Interpreting Hate Crimes under Article 510 of the Penal Code.
- Spanish Constitutional Court. (1990). Sentence 171/1990, 15 February.
- Spanish Constitutional Court. (1993). Sentence 336/1993, 15 November.
- Spanish Constitutional Court. (2007). Sentence 9/2007, 15 January.
- Spanish Constitutional Court. (2016). Sentence 112/2016, 20 June.

Spanish Supreme Court. (2018a). Sentence 420/2018, 25 September.

Spanish Supreme Court. (2018b). Sentence 72/2018, 9 February.

Spanish Supreme Court. (2019). Sentence 99/2019, 26 February.

Spanish Supreme Court. (2022). Sentence 488/2022, 19 May.

Teruel Lozano, G. (2018). Cuando las palabras generan odio: límites a la libertad de expresión en el ordenamiento constitucional español. *Revista Española de Derecho Constitucional*, n.114, 13-45.

United Nations Human Rights, Office of the High Commissioner. (2011). Expert Workshops on the Prohibition of Incitement to National, Racial or Religious Hatred.