
Is hate speech legislation necessary or desirable?

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Hate speech legislation is unnecessary and undesirable. New Zealand law already sets clear and enforceable limits on speech and strikes a fair balance between freedom of speech and the protection of racial, religious and other identifiable minority groups.

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Do we need a law to restrict speech if it is perceived to be hateful? Such a law would be unnecessary, undesirable and would erode the right to freedom of speech provided by the New Zealand Bill of Rights Act 1990. However the possibility of hate speech legislation is presently being inquired into by the New Zealand Government Administration Committee.

New Zealand law already places limits on freedom of speech. An everyday example is the law of defamation which sets limits on what may be spoken or written, where damage to a person's reputation may result. Another example is the Crimes Act 1961 (refer sections 66 and 311(2)) which makes it an offence to incite (by words or otherwise) any person to commit any criminal offence, whether that be a threat of violence or any form of criminal nuisance or public disorder. However the expression of hatred itself is not a crime, whether racial or religious or other form of hatred.

The issue now is whether minority groups in New Zealand are in such dire need of additional legal protection that a further limit to freedom of speech is justified. To which minority groups would hate speech legislation be designed to give added protection?

An article in the *NZ Herald* last year [*Where to draw the line on hate-speech law* by Peter Saxton 22 October 2004] commented that "with the desecration of Jewish cemeteries, vilification of the homosexual population and the sending of hate mail to Muslim communities, the announcement of a parliamentary inquiry into hate speech was timely". Hate speech legislation is now discussed with regard to each of race, religion and homosexuality.

Race

In New Zealand racial communities (including the Jewish community) are already protected not only by the criminal law referred to above, but also by the Human Rights Act 1993. Section 61 of that Act makes it unlawful to make threats that are abusive or insulting and

likely to excite hostility against any group of persons on the grounds of their colour, race or ethnic or national origins. Section 131 of the Human Rights Act 1993 makes it a criminal offence to do any such act with intent to excite hostility or ill-will against any such group.

Religion

Freedom of speech, including the ability to debate religious beliefs, is an important right. Members of religious groups are of course already protected by the Crimes Act as referred to above. Difficulties with any proposed hate speech legislation would include how to define “hatred”, “vilification” or even “religion”. Such legislation could itself be discriminatory where sensitivities and perception as to what is offensive varies between religions.

In England a House of Lords *Select Committee on Religious Offences* report of 10 April 2003 expressly declined to recommend a law prohibiting incitement to religious hatred (Refer www.publications.parliament.uk). There has been strong subsequent opposition to such a proposed religious offences law in England (Refer *NZ Herald* article *Faith- hate bill badly flawed* 9 December 2004). However prior to the tendering of this article for publication *The Times* newspaper in England on 7 February 2005 reported on-line that the relevant Bill creating such an offence in England was expected to be passed in the House of Commons and House of Lords and would likely become law within a month.

Homosexuality

What about perceived “vilification of the homosexual population”? Statements by religious groups about moral issues surrounding homosexuality is an example of the right to freedom of religion and freedom of speech. Section 15 of the New Zealand Bill of Rights Act 1990 provides that every person has the right to manifest their religion or belief in worship, observance, practice or teaching, either in public or private. This right includes public expression of moral views and the right to teach those views. Furthermore section 14 of the New Zealand Bill of Rights Act 1990 provides that everyone has the right to freedom of expression, including the freedom to seek, receive and impart information and opinions of any kind. These rights of expression are presently balanced by the limits imposed by the Crimes Act referred to above.

The desire of any minority group not to be criticised, even in a hostile manner, must always be balanced against the right to freedom of religious expression.

Legislative threshold test

New Zealand already has legislation, which sets clear and enforceable limits on speech, that strikes a fair balance between freedom of speech and the protection of racial, religious and other identifiable minority groups. However if hate speech legislation was introduced and could adequately define for legal purposes the terms “hatred”, “vilification” and “religion”, what would be the new legislative threshold test for prohibition of hate speech?

Would the legislative test be set high enough to allow hostile criticism? If the threshold test was set at a very high level, such that to be unlawful “hate speech” it would need to contain threats of physical violence for example, then the new law would be unnecessary as it would be co-extensive with New Zealand’s present Crimes Act.

On the other hand, if the threshold test were set at a low level, then much comment in daily newspapers would be prohibited and freedom of expression would be seriously eroded. If the threshold test were a vague middle ground compromise, then there would likely be many complaints of hate speech laid with no certainty of what the new law was. The effect would still be to stifle debate, as media interests would soon realise that the cost of contesting complaints/ prosecution/ litigation was too great. Such hate speech law would be undesirable as having a “chilling effect” on freedom of expression without achieving any clear objective. A low or middle ground test could also produce division in our society if members of different groups laid vexatious complaints against others.

Either way hate speech legislation is unnecessary and undesirable. Clearly there is need for wide ranging debate on any Government proposal for hate speech legislation.