
THE LENS

HAVE WE LOST THE ABILITY OF BEING OFFENDED OR MUST WE BE INTOLERANT OF INTOLERANCE?

Words undoubtedly matter. The horrors of the twentieth century have shown how derisive and dehumanising language can lead to attitudes that permit discrimination that in turn lead to abuse, racism and to extreme forms of genocide. The question democratic societies need to ask themselves is where to draw the line that differentiates between free speech and hate speech?

Given the history of South Africa, it is no surprise that our Constitution specifically prohibits hate speech. Section 16 (b) refers to speech that incites imminent violence and Section 16 (c) refers specifically to hate speech which constitutes incitement to do harm.

The element of harm, however, is defined as an important element of what constitutes hate speech.

In the Prevention and Combating of Hate Crimes and Hate Speech Bill (B9-2018) the definition of “harm” includes “any emotional, psychological, physical, social or economic harm”. In other words, what is said, of necessity, has to result in some kind of harm. Under the law, that harm must be tangibly demonstrated.

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The words attributed to Voltaire: “I defend to the death your right to say it, even if I do not agree with what you are saying” form the basis of free speech in democratic societies.

THIS ISSUE'S FEATURED ARTICLE

*Have we lost the ability of being offended
or must we be intolerant of intolerance?*

By Felicity Harrison

For if we do not allow people the freedom to think and express themselves, we deny them a fundamental right as human beings. Free speech allows for difference of opinion and creativity. It moves away from homogenising culture and allows for and celebrates difference.

There is no right not to be offended.

This stands in stark contrast to Karl Popper, who famously wrote of the paradox of intolerance,

“UNLIMITED TOLERANCE MUST LEAD TO THE DISAPPEARANCE OF TOLERANCE. IF WE EXTEND UNLIMITED TOLERANCE EVEN TO THOSE WHO ARE INTOLERANT, IF WE ARE NOT PREPARED TO DEFEND A TOLERANT SOCIETY AGAINST THE ONSLAUGHT OF THE INTOLERANT, THEN THE TOLERANT WILL BE DESTROYED, AND TOLERANCE WITH THEM. IN THIS FORMULATION, I DO NOT IMPLY, FOR INSTANCE, THAT WE SHOULD ALWAYS SUPPRESS THE UTTERANCE OF INTOLERANT PHILOSOPHIES; AS LONG AS WE CAN COUNTER THEM BY RATIONAL ARGUMENT AND KEEP THEM IN CHECK BY PUBLIC OPINION, SUPPRESSION WOULD CERTAINLY BE MOST UNWISE. BUT WE SHOULD CLAIM THE RIGHT TO SUPPRESS THEM IF NECESSARY EVEN BY FORCE ... THEY MAY FORBID THEIR FOLLOWERS TO LISTEN TO RATIONAL ARGUMENT, BECAUSE IT IS DECEPTIVE, AND TEACH THEM TO ANSWER ARGUMENTS BY THE USE OF THEIR FISTS OR PISTOLS. WE SHOULD THEREFORE CLAIM, IN THE NAME OF TOLERANCE, THE RIGHT NOT TO TOLERATE THE INTOLERANT”.

How do we weigh competing rights in contemporary South Africa?

In an open and free society, it is axiomatic that the views of one person or group will offend others. The challenge has always been to weigh up the competing interests of society and those of the individual. Where these are in competition, grey areas result. In a country such as ours, we face a number of critical challenges that remain linked to our violent history of injustice and oppression.

The legacies of apartheid, colonialism and slavery persevere and influence our current social context. Systemic and structural exclusion, racialised poverty, inequality, economic disenfranchisement and intergenerational trauma are some of the historical legacies that remain intact and underpin notions of hate and violence in society.

Divisions in our society persist 28 years since the advent of democracy. Race, class and gender continue to divide the country in significant ways.

Part of the problem has been that those who hold harmful racist, misogynist views have done so under the banner of 'free speech'.

So, for example, in a country where more than 10 000 women were raped in the first quarter of the year, 'jokes' and demeaning language against women arguably contribute to the continued onslaught on women and their bodies.

I would argue that in our context, in order for us to have a truly reconciled country, those who practice hate speech need to be held to account for their actions. Section 36 of the Constitution allows for the "limitation of rights which are reasonable and justifiable in an open and democratic society".

Our history demands that at this time, we are intolerant of intolerance. The possibility for harm is great. By not doing so, we allow the structures and systems of injustice to remain, and those who have been historically oppressed will remain the victims of pernicious and harmful groupings in society.

It will not always be so. There will come a time when reconciliation is further along, when the wounds of the past have been addressed and we have a more cohesive society. Things decided once do not always need to remain so.

Our needs are fluid and we need to constantly reassess what is needed. At this time, however, the harm done by speech is too great to be tolerated.

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