

Review of the Prohibition of Incitement to Hatred Act 1989

Public Consultation submission 13/12/19

Issue 1: Protected characteristics covered by the 1989 Act

The Act deals with incitement on the grounds of race, colour, nationality, religion, ethnic or national origins, membership of the travelling community and sexual orientation. The Department is examining whether this list should be amended.

Question

1. Are there other groups in society with shared identity characteristics, for example disability, gender identity, or others, who are vulnerable to having hatred stirred up against them and should be included in the list of protected characteristics?

1: Instead of trying to exhaustively list all vulnerable groups (especially as this might change) we would suggest that incitement to hatred against *any* group or person be outlawed, especially if this involves public statements that includes dehumanisation.

Of dehumanisation Genocide Watch say -

“Denial of the humanity of others is the step that permits killing with impunity. The universal human abhorrence of murder of members of one’s own group is overcome by treating the victims as less than human...The targeted group is often likened to a “disease”, “microbes”, “infections”, “parasites” or a “cancer” in the body politic...”

Publicly dehumanising any group or person - even if it doesn’t include language that explicitly incites violence - has been unfortunately proven to make it substantially easier to cause damage to this person or group. When these dehumanised people are then portrayed as a danger to society - any kind of a danger - all statements in this vein become clear incitement to hate crimes.

The normal adaptive, logical and necessary response to any danger to our existence is to destroy/eradicate the danger and ‘save’ the society. If any group is dehumanised and portrayed as a danger then, regardless of who they are, what they believe or how they choose to live their lives, it opens the way for discrimination and violence.

As the Irish government is aware, the members of the Baha’i community in both Iran and Yemen are very heavily persecuted. While this persecution includes official discrimination, the lived experience of Baha’i people in these countries is that unofficial channels of hate speech also present a huge danger. When hate speech which characterises Baha’is as a threat comes from religious pulpits or is propagated in the media it contributes to many crimes being perpetrated against individual Baha’is - including murder.

With all this in mind, we would suggest that as well as adding other known vulnerable groups, the legislation should include reference to dehumanisation and should make it illegal to dehumanise anyone. It should also be illegal to characterise any person or group as a threat without substantial, provable legal grounds.

Issue 2: Use of the term “hatred” in the Act

Under the 1989 Act, in order to be an offence, the words or material must be intended or likely to stir up “hatred” against one of the protected list of groups. This is a high threshold. It is important to remember that the Act is designed to deal with hateful behaviour that is sufficiently severe to reach the threshold for criminal prosecution. The term “hatred” is not defined and has its ordinary meaning. Given that prosecutions under the Act have been relatively rare, the Department is considering whether the requirement to stir up hatred should be replaced by another term (hostility or prejudice, for example).

Question

2. Do you think the term “hatred” is the correct term to use in the Act? If not what should it be replaced with? Would there be implications for freedom of expression?

2: We would like to suggest that the word hatred be retained and that the words hostility, prejudice and discrimination be added.

There is no simple answer to the issue of freedom of speech but, as in Issue 1, if there is overt hostility against any group in society and this group and its members are dehumanised and portrayed as a threat then public demonstration of this hostility will prove a potential danger to the people/group in question and then, therefore, to Irish society as a whole.

Road traffic laws exist not because we can predict exact outcomes if these laws are not obeyed but because we know that driving/acting in a certain way on the road will substantially increase the danger to all road users. Traffic laws necessarily curb the individual freedom of road users but this is deemed necessary in order to ensure safety.

There is substantial international and historical evidence that hate speech is a contributory factor to hate crime and as it increases the risk of both danger to individuals or groups and also increases the risk of crime then there is a need and a case for protecting Irish society against hate speech.

Incitement to Hatred legislation should seek to make our society safe not to repress freedom of speech, having this intention will help to avoid suppression of expression.

Issue 3: Application of the Act to online speech

The wording of the 1989 Act is broad enough to cover incitement via modern technologies and online behaviour. The definitions of “broadcast”, “publish”, “recording” and “distribute” in the Act are wide enough to cover online broadcasting, publication and social media discourse. However, the Department is considering whether a more explicit wording mentioning these forms of communication might result in more successful prosecutions under the legislation. The 1989 Act refers to distributing written material to the public or a section of the public. The Department is considering whether this is sufficient to capture modern day communications where posts on social media sites can be general posts or theoretically limited to followers or ‘friends’ and could therefore be argued not to be public.

Question

3. Bearing in mind that the Act is designed only to deal with hate speech which is sufficiently serious to be dealt with as a criminal matter (rather than by other measures), do you think the wording of the Act should be changed to make prosecutions under for incitement to hatred online more effective? What, in your view, should those changes be?

3: If hate speech is legally identified as a danger to society then, like terrorism, it can be more controlled on social media as well as elsewhere. In the same way that terrorist groups can be proscribed under the Offences Against the State Acts, if hate speech is seen as a crime that can endanger society then even closed social media groups who promote racist or discriminatory ideologies could be monitored and potentially proscribed (like terrorist groups) if it is perceived that their words or actions could incite hatred and result in criminal actions. Are there legal

measures like this to deal with terrorism and terrorist ideology on social media that could be used as models?

The most effective way to monitor these groups is to insist on the cooperation of the social media platforms they use and to make laws that implicate these providers if they facilitate dangerous groups or fail to bring them to the attention of the relevant government bodies.

Issue 4: Proving intent or likelihood

A critical element of all of the offences in the 1989 Act is the requirement to prove that the action was intended or likely to stir up hatred. In some cases prosecutions may not succeed as this intent or likelihood cannot be proven, regardless of the actual effect of the action. The Department is considering whether the need to prove intent or likelihood within the Act should be changed, for example to include circumstances where the person was reckless as to whether their action would stir up hatred.

Questions

4. In your view, does the requirement that an offence must be intended or likely to stir up hatred make the legislation less effective?
5. If so, what changes would you suggest to this element of the 1989 Act (without broadening the scope of the Act beyond incitement)?

4. Requiring that an offence be intended to stir up hatred is difficult to prove if it stands alone. However, if the legislation is changed so that it is accepted that the 'likelihood' of provoking criminal actions is increased by dehumanisation or characterising a group as dangerous simply because of their beliefs, ethnicity, sexual orientation, culture, abilities, nationality etc. then it becomes accepted that certain actions can prove intent or, at the very least, criminal negligence.

5. We would suggest that the legislation be changed so that any action that stirs up hatred regardless of the conscious intention of the perpetrator be prosecutable.