

Beyond punishment

Singapore's proposed racial harmony law a forward-looking approach

The Maintenance of Racial Harmony Bill provides a more holistic approach to promoting responsible speech on race with pathways to reconciliation.



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Our history and nation-building experience demonstrate that thoughtful and deliberate policies, and even-handed treatment of racial issues, are essential. Muscular and nuanced laws are also required. Singapore's approach to multiracialism has been described by President Tharman Shanmugaratnam as a "very intrusive model of integration" incorporating shared experiences and common spaces such as the national school system and public housing. He noted that Singaporeans want "to retain their sense of identity, their faith, a sense of their own culture", even as they are "part of a common fabric of Singapore society".

Amid such pluralism, racial harmony is not preordained. It has become only more challenging to preserve, given an interconnected world where tensions can easily escalate across borders, fuelled by global conflicts or amplified by social media's rapid spread of harmful stereotypes and divisive rhetoric.

As these platforms become more pervasive and influential, the potential for racial discord grows, making it essential for societies to actively safeguard and foster understanding among diverse communities. Foreign actors may also seek to exert malicious influence on race-based entities to exploit race and undermine racial harmony.

It is in this context that the Maintenance of Racial Harmony Bill (MRHB) was tabled in Parliament on Jan 7. It is not only a pre-emptive move to deal with these evolving threats to racial harmony but also manifests an enlightened and forward-looking approach to managing identity issues and aspirations.

The Bill draws inspiration from the Maintenance of Religious Harmony Act (MRHA) which was enacted in 1990 amid concerns then of the mixing of religion and politics. The MRHB, however, does not signal that race relations are not well.

A key aspect of the Bill is its holistic set of legislative levers to protect racial harmony, going beyond prosecution to promote responsible speech on race and to allow space for engagement and reconciliation. This is significant in creating a more constructive path towards understanding and building lasting social cohesion.

PROMOTING RESPONSIBLE SPEECH ON RACE

Questions have been raised on the impact this Bill could have on race-related discourse. Will this curtail legitimate discussions and debates on race? Or will it intrude into the freedom of speech guaranteed by the Constitution?

Existing Penal Code offences that deal with threats to racial harmony will be ported over, with refinements, to the MRHB. Three distinct offences are provided in the MRHB: (1) inciting enmity, hatred, ill-will or hostility against a racial group; (2) insulting, vilifying, denigrating, threatening or abusing another person on the basis of race; and (3) inciting violence on the basis of race, or against a racial group.

To be clear, there is no blanket



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prohibition in the MRHB on discussions about race. The status quo is maintained.

Unrestrained public discussions that are prohibited today will continue to be prohibited. But any racial group can discuss and articulate racial issues affecting them in private or public settings, as is the case with religion under the MRHA.

The MRHB, in fact, provides for the defences of private conduct and raising matters in good faith. The former enables people to freely discuss race in a private or domestic setting with the reasonable requirement that non-parties are not privy to the discussion. The latter defence will enable individuals to call out race-related issues requiring attention, such as racial discrimination, or offensive matters against any race, to bring about the removal of such matters.

It is trite that Singapore does not accept an absolutist approach to free speech and that restrictions on unbridled speech are needed to maintain racial and religious harmony.

The proper focus must instead be on responsible speech. Irresponsible speech is a clear threat to our hard-earned social cohesion. Conduct that deliberately offends or sows discord cannot claim free speech protection.

RESTRAINING ORDER MECHANISM

Under the MRHB, the Minister for Home Affairs can issue racial content restraining orders (ROs) to prohibit a person from addressing a specified audience on a specific topic, or producing or distributing content that prejudices racial harmony. The RO takes immediate effect without the need to establish that the person is engaging in criminal conduct.

To be clear, the RO mechanism is separate from the criminal process; a person subjected to an RO is not necessarily guilty of any crime. Instead, it is a pre-emptive measure, seeking to nip in the bud any act that is reasonably assessed to be capable of

fomenting racial disharmony. It also serves to encourage and protect responsible speech on matters of race.

In such matters, it is foolhardy to allow the authorities to act only when there is a clear and present danger. The harm sought to be avoided would have occurred with irreparable damage to society.

But beyond that, this approach creates vital space for learning and socialisation of appropriate norms without the stigma of criminalisation. By focusing on prevention rather than punishment, the RO mechanism potentially opens pathways for reflection and engagement, recognising that

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There are safeguards to the Executive's use of this discretionary power. A person subject to an RO can make representations to the proposed Presidential Council for Racial and Religious Harmony (the Council) within 14 days of receiving the RO, and after this 14 days, the Council must review the RO within 30 days and make its recommendation to the elected President.

The Cabinet must then advise the President whether to cancel, confirm, or vary the RO. Generally, the President acts on the advice of the Cabinet unless the Cabinet's recommendation differs from the Council's. In such a scenario, the President acts in his discretion whether to confirm, cancel, or vary the RO.

It is noteworthy that no ROs have been issued under the MRHA since it came into force in 1992 although the authorities came close to invoking the law on several occasions. The religious leaders concerned stopped their activities of mixing religion with politics and/or putting down other faiths after the authorities engaged and warned them.

REPARATIVE MEASURES

The MRHB provides space for engagement also through its Community Remedial Initiative, which offers an alternative path forward in appropriate non-egregious cases of race-related offences.

This still holds the offender accountable but offers him an opportunity to voluntarily reconcile differences with the offended racial group.

Rather than a penal sanction such as jail time and/or a fine, this focus on rehabilitation of the offender and the reparation of community ties is most effective when the offender displays remorse over his actions and makes amends directly to the offended racial community.

The benefits are twofold. The offender reflects on his actions and better understands our

multiracial context, and the offended racial community is given a chance to engage with and accept the apology by the offender.

It is by no means an easier or softer option for the offender; it's perhaps even more challenging.

Both the offended racial community and the offender will have to purposefully engage each other. But the outcomes are likely to be better for the racial community and offender as well as for society.

BALANCE BETWEEN LAW AND RECONCILIATION

Legislation alone doesn't ensure racial harmony. While it is necessary, it is not sufficient to manage the threats that unpick our delicate racial fabric. Furthermore, race-related policies and institutions must remain fit for purpose.

The MRHB has been proposed with that understanding and recognition of the new challenges, adopting approaches that go beyond prosecution.

It is preferable to have a robust set of laws, sound policies and strong institutions, harmonised and tested when race relations are good. Appropriate norms of behaviour are also best inculcated then. But Singaporeans must remain committed to multiracialism.

As President Tharman said last September at the State Address by Pope Francis, "Forging a culture of accommodation, let alone trust, takes consistent and continuing effort, anywhere in the world. We have to build a deeper understanding of each other, strengthen interactions between different ethnic and religious groups, and actively weaken the ground for forces that seek to pull communities apart". That is the solemn responsibility of all of us, which no law can adequately mandate.

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