

CAPE



PENAL CODE S298A

does it promote racial & religious
harmony or enmity in Singapore?

WHAT IS SECTION 298A?

Section 298A: Promoting enmity between different groups on grounds of religion or race and doing acts prejudicial to maintenance of harmony

Whoever —

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, ***knowingly promotes*** or attempts to promote, on grounds of religion or race, ***disharmony or feelings of enmity, hatred or ill-will between different religious or racial groups;***
or

(b) commits any act which he knows is ***prejudicial to the maintenance of harmony between different religious or racial groups*** and which disturbs or is likely to disturb the public tranquility

shall be punished with imprisonment for a term which may extend to 3 years, or with fine, or with both.

WHERE DID SECTION 298A COME FROM?

Section 298A was enacted as part of the 2007 Penal Code review to “plug a gap” as actions that threaten racial and religious harmony were not covered by the Penal Code.¹

During the Second Reading of the amendment Bill, the Senior Minister of State for Home Affairs Assoc Prof Ho Peng Kee highlighted that the requirement of “knowingly promotes” was inserted to address the public’s concern regarding the seemingly broad scope of the offences.²



He also added that “words that are carelessly spoken will not be caught” and “a critical but rational and objective discussion of religion and religious principles will also not likely be caught”.³

WHO KENA SECTION 298A BEFORE?



In 2013, former NTUC assistant director Amy Cheong was issued a stern warning for disparaging the Malay community, specifically Malay wedding customs and their divorce rates.⁴

In 2017, Muslim imam Nalla Mohamed Abdul Jameel Abdul Malik was fined \$4000 for promoting enmity between different religious groups after a video of him praying for "victory over Jews and Christians" went viral.⁵

In January 2019, activist Sangeetha Thanapal who coined the term "Chinese privilege" was given a stern warning for insinuating that the Chinese in Singapore acted in a racist manner towards other races.⁶

In August 2019, YouTuber Preeti Nair and rapper Subhas Nair were issued a 24-month conditional warning for a rap video that they had made in response to a "brownface" ad by Nets & Mediacorp.⁷

BEFORE SECTION 298A: THE SEDITION ACT

The language of Section 298A is closely related to Section 3(1)(e) of the Sedition Act, which prohibits “promot[ing] feelings of ill-will and hostility between different races or classes of the population”. Prior to 2007, individuals who were convicted for hate speech under this offence include:

Benjamin Koh

Parodied the halal logo and placed it next to a pig’s head on a blog post, spewed vulgarities at the Muslim Malay community, mocked their customs and beliefs and compared Islam to Satanism.⁸

1 month imprisonment

Gan Huai Shi

Wrote a blog post entitled “The Second Holocaust” calling for a genocide against the Malays.⁹

**24 months supervised
probation**

FREEDOM OF SPEECH VS FREEDOM FROM OFFENCE

In PP v Koh Song Huat Benjamin, the District Court held that “the right of one person’s freedom of expression must always be balanced by the right of another’s freedom from offence, and tampered by wider public interest considerations.” But it is unclear:



how these rights
are balanced

&



what the legal limit of
acceptable speech on
race and/or religion is

What's the effect?

Fear of being charged under the law may prevent individuals from speaking up on matters relating to race and religion. According to Assoc Prof Jaclyn Neo, such laws may be “counter-productive in the long run [as] repressing open communication may lead to **suspicion, resentment and division, thereby impeding true integration and the creation of a true community.**”¹⁰

"HATE SPIN": HATE SPEECH LAWS GONE WRONG?



According to Prof Cherian George, hate speech laws may enable the political strategy of *"hate spin"*¹¹

It is a political tactic involving the use of *vilification* (manufactured outrage) as a means of mobilising supporters and coercing opponents!

*His analysis of India and the USA suggests that hate speech laws often backfire because they "place the coercive muscle of the state at the disposal of the most intolerant sections of society".*¹²

*His research found that "the system in practice gives impunity to those who use hate speech against minorities while at the same time declaring minorities' expression to be intolerably offensive."*¹³

Is it time to reconsider Section 298A?

According to a 2011 UN report on Singapore by the UN Special Rapporteur on racism, it was found that “the legitimate goal of searching for racial harmony may have created some blind spots in the measures pursued by the Government and may in fact, and to a certain extent, have further marginalized certain ethnic minorities.”¹⁴

The Special Rapporteur added that during his mission to Singapore, he met many Singaporeans who shared that Singaporean society had “evolved substantially from the days of the violent confrontations 45 years ago, and that it was now able to hold open public debate on a sensitive issue like ethnicity in a dispassionate and fruitful manner”.¹⁵

The Way Forward: Regardless of Race or Religion

Prof George argues that **defending the rights of minority groups against actual discrimination** would secure their welfare far more effectively than trying to protect them from insult:

“Antidiscrimination, equality-enhancing laws, as well as protection for the basic human security and other substantive rights of vulnerable groups are probably more important than what a society allows people to say about them.”¹⁶

Similarly, Prof Jaclyn Neo suggests that laws restricting speech on race or religion should be mitigated by the **long-term goal of integrating the population towards creating a shared sense of identity**:

“This requires some measure of free, open and reasoned debate about racial and religious differences, and... this may sometimes even entail groups confronting and debating competing views, which can be a discomfoting process.”¹⁷

Food For Thought

- Do you think laws like Section 298A of the Penal Code promote racial and religious harmony in Singapore? Or does it hamper open discussion and discourse about race and religious relations in Singapore?
- Where should the balance be drawn between political correctness and freedom of speech?
- Should hate speech laws be enacted to protect other groups such as women, the LGBTQ+ community and the disabled as well?

References

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13. *Ibid*, p. 2967
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17. Jaclyn L Neo, "Seditious in Singapore! Free speech and the offence of promoting ill-will and hostility between different racial groups" (2011) *Singapore Journal of Legal Studies*, p. 372.