

## Racial and Religious Hatred Bill

# Why a religious hatred law would harm religious liberty and freedom of speech

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## **What people have said about an incitement offence**

### **Islamic Human Rights Commission**

“IHRC would like to express its deep concern at Home Secretary David Blunkett’s latest proposals to outlaw incitement to religious hatred. Rather than enjoying additional protection from the law, religious minorities could find themselves the targets of prosecutions under the proposed legislation.”

(Islamic Human Rights Commission, Press Release, 7 July 2004)

### **Neil Addison, barrister and author of Harassment Law and Practice (Blackstones)**

“The danger with creating these special types of religious offence is that they stimulate feelings of divisiveness, create “thought crimes” and lead to show trials where judges, or juries, have to make decisions in areas where historians and philosophers have been unable to agree for centuries.”

(*The Times*, 9 November 2004)

### **Lord Desai**

“The difficulties of legislating religious hatred as an extra ground for prosecution are enormous. The issue is not that we should be tolerant of all religions and all adherents of different religions, but whether religious hatred as such can be identified as a category on which prosecutions can be based. We have laws against inciting racial hatred, and indeed incitement to violence on any grounds. Why do we need to add religious hatred?”

(*The Independent*, 8 July 2004)

### **Financial Times, 9 July 2004**

“While these proposals are well-meaning, they risk any number of unintended side-effects...Of any proposed religious hatred law we must ask whether it passes the Salman Rushdie test. Would it allow Salman Rusdhi to have been prosecuted for writing *The Satanic Verses*? If it does, then it must be scrapped. And if it does not, then we must ask: what does it add that is not covered by existing legislation?”

### **The Daily Telegraph, 8 July 2004**

“But is such a law needed? No. We already have laws prohibiting discrimination, intimidation and incitement to violence...intelligent enforcement of existing laws would be more effective than the creation of new ones. Will such a law work? No. Rather, it would take an already vexed area and confuse it further.”

*What MPs have said about the offence in previous debates:*

**David Heath MP (Liberal Democrat)**

“...there is a high likelihood of vexatious or other complaints to the police that will result in investigation and which will thus effectively lead to the harassment of people who are legitimately proselytising their faith or behaving properly, which will have an effect on free speech.”

(Hansard, 21 June 2005, cols 682-683)

**David Davis MP (Conservative)**

“...the Attorney-General will decide if someone has gone too far and broken the law...Before it reaches that stage, however, an individual can be investigated and have his character called into question...Inevitably, we will end up with a situation where serious debate and freedom of speech are limited. Our society and our tradition of tolerance will be poorer as a result...We risk creating a tit-for-tat situation which encourages suspicion and mistrust between religions, rather than the harmony that we seek.”

(Hansard, 21 June 2005, cols 686 and 688)

**Bob Marshall-Andrews QC MP (Labour)**

“At root, the matter is philosophical; there is a profound difference between hatred based on race, sex or age – all of which are thrust upon us; we have no choice – and on religion, which is not thrust upon us. Religion is a matter of choice; it is a matter of what we do. It is intolerable, and should be criminal, to incite hatred of a man or woman because of what they are, but I have grave doubts whether it should be criminal, as opposed to merely socially unacceptable, to incite hatred of someone because of what they do.”

(Hansard, 7 December 2004, col.1075)

**Gordon Prentice MP (Labour)**

“...the Bill may encourage self-censorship. People may be wary of saying anything that could be taken out of context and cause offence. The people who say that most passionately are those who work in the creative world –journalists, writers, comedians and performers. The comedian, Rowan Atkinson, who attended the meeting in the Jubilee Room last night, said that he believed that the Bill would lead to a ‘chilling of the climate of free expression’.”

(Hansard, 7 December 2004, col.1097)

**Bob Spink MP (Conservative)**

“The religious incitement measures will damage freedom of expression and religious liberty. They will prevent fair comment about religious beliefs and cults and enable them to silence their critics...Some cults are corrosive to society, especially Christian society, which is still broadly the society that we enjoy in this country – and I do not want anyone ever to be at risk of being prosecuted for saying that.”

(Hansard, 7 December 2004, col.1100)

*What others said in 2001:*

**Lord Peston**

“I can think of no appropriate form of the legislation in respect of which I could put my hand up and say that it is compatible with liberal parliamentary democracy or the open society.”

(Hansard, 10 December 2001, col. 1180)

**John Wadham, then Director of Liberty**

“Our concern is that these measures, apart from being a sop that the Government wants to throw at the Muslim community, will be divisive, impractical and breach fundamental issues relating to freedom of expression.”

(Evidence before the Home Affairs Select Committee, 8 November 2001)

**The Gay Times, November 2001**

“Well, of course something should be done, but not what Mr Blunkett has in mind... The three leading world religions – Christianity, Judaism and Islam – all hold that homosexuality is a perversion... The great danger of Mr Blunkett’s new Act is that it would make it illegal to take issue with orthodox religious views of homosexuality.”

**Melanie Phillips**

“...the new law will criminalise not deeds that threaten life and liberty but thought itself...”

If we are properly to defend our liberal values, it’s essential to realise what freedom of speech entails. It is the freedom to say things that cause offence; it is the freedom to say things that may cause people to dislike others. Once you try to prevent that by legislating against hatred, where would you stop?”

(*The Sunday Times*, 21 October 2001)

**John Mortimer QC**

“If we are free to adopt a religion we must also be free to discuss the dangers of other religious beliefs.”

(*The Daily Mail*, 18 October 2001)

**Matthew Parris**

“Glenn Hoddle’s remark that the disabled may be being punished for sin in a former life was silly, but should it be criminal? It’s a point of view. A few hundred million adherents to reincarnationalist faiths hold it. May I not mock the fallacy of reincarnationism? The new law will lead to trouble and confusion. Leave it alone, Mr Blunkett.”

(*The Times*, 13 October 2001)

## Summary

The Government is attempting, for the third time, to introduce an incitement to religious hatred law. Its plans are contained in the Racial and Religious Hatred Bill which completed its Commons stages in July and will be debated for the first time in the Lords on 11<sup>th</sup> October.

The proposal is opposed by people of many different religions and none. A religious hatred law would harm religious liberty and freedom of speech.

The Government first proposed this law in 2001 – following the terrorist atrocities of September 11<sup>th</sup>. The Home Secretary argued that the law was needed to deal with the reported problem of attacks on mosques and to protect people from verbal abuse and physical attack because of their religion.

But following widespread criticism and two defeats in the House of Lords the Government dropped the plans.<sup>1</sup> A second attempt in early 2005 was dropped due to opposition from the Lords, combined with a lack of time before the General Election.

### ***Incitement to Religious Hatred***

The Racial and Religious Hatred Bill creates the offence of incitement to hatred on the grounds of religion in England and Wales.

Though we appreciate the Government's good motives we are against a religious incitement law because:

- It will harm freedom of speech. It has the potential to criminalise ordinary religious debate. It will have a massive 'chilling effect' on free speech.
- The Attorney General and judges should not be required to adjudicate on people's religious beliefs.
- Protection already exists for all people regardless of religion. It is currently a criminal offence to incite a crime against another person, whether or not religion is the cause. And in 2001 Parliament passed new laws creating religiously aggravated offences.
- Some cults are litigious. They will hold the threat of prosecution over the heads of their detractors.

At The Christian Institute, we know about anti-religious sentiment. We deal with cases of individuals who are mistreated because of their beliefs. To silence those who disagree with us we could easily seek to make use of this new law if it is passed. But we do not believe it would be right to do so.

The Bill does not define what constitutes a "religious belief or lack of religious belief."<sup>2</sup> For this reason everyone from atheists to animists and humanists to Hindus has cause to worry. The proposed law is vague in definition and full of uncertainty.

Although many well-intentioned people support the proposals, the new law would have a severe impact on free speech.

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<sup>1</sup> Anti-terrorism, Crime and Security Bill 2001. See House of Lords, Hansard, 10 December 2001, cols 1163-1195 and 13 December 2001, cols 1449-1465

<sup>2</sup> Racial and Religious Hatred Bill 2005

## Protections in the existing law

### The position of religious believers under the existing criminal law

The aim of the new offence of inciting religious hatred is to protect religious believers. Yet the existing law already provides protection. Obviously, an actual attack on a religious person or his property would be caught by the laws on assault or criminal damage.

Importantly, in addition, anyone who *incites* an attack on a religious person or his property is also committing an offence. Incitement to commit a criminal offence is an offence in itself. So the person who lambastes Islam in a speech and urges his listeners to desecrate the local mosque can be prosecuted for inciting criminal damage.

Similarly, the atheist who arranges for a group of people to wait outside a church to attack the first person to come out of the door is inciting assault. Serious criminal penalties can be brought to bear in both cases without any need to prove that there was any element of religious hatred.

The law against inciting *racial* hatred can also be used where it is clear that religion is being attacked as a proxy for race. For example, David Wilson, a BNP activist, put out an anti-Muslim leaflet in an area of Glasgow where a high percentage of the population were Muslims of Pakistani origin.<sup>3</sup> The court held he intended to stir up racial hatred and jailed him for four months.<sup>4</sup>

### Aggravated Offences

Since 2001 Parliament has passed new laws creating religiously *aggravated* offences, which provide additional safeguards. The intended effect of these offences is to introduce tougher penalties where a crime has been committed and there has been a religious or anti-religious motivation.

The important thing about them is that a crime *must already have been committed*. They only operate in tandem with a prosecution for an existing offence such as assault or harassment.

The Crown Prosecution Service prosecuted 44 cases of religiously aggravated crimes in the year April 2003-March 2004.<sup>5</sup>

The Home Secretary issued a written statement on 7<sup>th</sup> December 2004 in which he gave specific examples of what the new incitement law was designed to cover. They included “suggesting that Muslims are a threat to British people... and that they should be urgently driven out of Britain.”<sup>6</sup> But this is already illegal. A man from the North Midlands was convicted and fined £300 for displaying a poster which said “Islam out of Britain – protect the British public.”<sup>7</sup> He was convicted under the existing law against harassment, while his sentence took account of the religious element under the “religious aggravation” provisions introduced in 2001. It seems astonishing that the

<sup>3</sup> BBC News Online, 24 October 2002, see <http://news.bbc.co.uk/1/hi/scotland/2356837.stm> as at 12 August 2005

<sup>4</sup> BBC News Online, 14 November 2002, see <http://news.bbc.co.uk/1/hi/scotland/2473967.stm> as at 12 August 2005

<sup>5</sup> Crown Prosecution Service, Press Release, *CPS Racist and Religious Crime Data Published*, 18 January 2005

<sup>6</sup> House of Commons, Hansard, 7 December 2004, col. 82WS

<sup>7</sup> *The Independent*, 7 April 2004 and *Daily Post (Liverpool)*, 4 July 2003

Government should be introducing a law specifically targeting activities which are already illegal.

In light of the existing criminal law, strengthened since 2001, it is questionable what additional protection an incitement to hatred law could provide.

### ***New laws***

The Government has recently begun to suggest that the religious hatred law is needed to tackle Islamist preachers who preach support for terrorism.<sup>8</sup>

However, Government Ministers clearly do not believe their own spin, since after the July 7<sup>th</sup> bombings they announced a raft of other new laws specifically addressing those who justify terrorism.<sup>9</sup> If the religious hatred law is passed under the guise of tackling terrorism, then many will feel the terrorists have won a significant victory by considerably curtailing British civil liberties.

### ***Attacks on churches***

Although attacks have been reported on mosques, attacks on places of worship are not unique to Muslims. For many years now there have also been attacks on churches, which have not received much media attention.

Between 31<sup>st</sup> March and 25<sup>th</sup> November 2004 local press reported arson attacks on churches or church property in Bridlington, Leicester, Nottingham, Wallasey, Derby and Epworth (near Scunthorpe).<sup>10</sup>

A report in May 2004 from the Liverpool Daily Post reported that there had been 96 serious fires in Merseyside churches since 1997 – 80 per cent of which were believed to have been arson.<sup>11</sup>

Every single arsonist who attacked a church was committing a serious criminal offence. And now such an arsonist could face a tougher penalty if it is proved that his actions were aggravated by religious hatred. As with other areas of crime, the problem is not the law, but the enforcement of the law. The best way forward is to rigorously enforce existing laws, not to create a new offence.

A six-fold increase in “faith hate crimes” in London was reported in the immediate aftermath of the July 7<sup>th</sup> bombings, mainly in verbal abuse and minor assaults. There were 269 religious hate crimes in the three weeks after 7<sup>th</sup> July, compared with 40 in the same period of 2004.<sup>12</sup> This is despicable. Of course, the very reason these incidents are reported as “faith hate crimes” is that they are already illegal. These are the “aggravated offences” introduced in 2001 which give stiffer penalties to crimes motivated by religious hostility.

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<sup>8</sup> 10 Downing Street Press Briefing, 1100 BST, Thursday 14 July 2005, see <http://www.number-10.gov.uk/output/page7934.asp> as at 12 August 2005

<sup>9</sup> Prime Minister’s Press Conference 26 July 2005, see <http://www.number-10.gov.uk/output/Page7999.asp> as at 12 August 2005

<sup>10</sup> *Hull Daily Mail*, 25 November 2004; *Leicester Mercury*, 16 October 2004 and 31 March 2004; *Nottingham Evening Post*, 13 November 2004; *Liverpool Echo*, 4 November 2004; *Derby Evening Telegraph*, 7 September 2004; *Scunthorpe Evening Telegraph*, 29 May 2004

<sup>11</sup> *Daily Post (Liverpool)*, 10 May 2004

<sup>12</sup> <http://news.bbc.co.uk/1/hi/england/london/4740015.stm>

## The balance between protection and free speech

The House of Lords Select Committee on Religious Offences reported in April 2003. It conducted a wide-ranging and thorough review, but found there was no consensus on introducing a religious incitement offence.<sup>13</sup>

Viscount Colville of Culross chaired the Select Committee. Subsequently, in 2004, he spoke against a new offence, arguing that the current law strikes the right balance between protecting religious people and maintaining the right to free speech. He said:

“There is a very substantial amount of criminal law relating to incitement... It is much more positive and less abstract than some people may think... a good deal of criminal law is available. I do not believe that it has all yet been tried out before we invent something else.”

Lord Colville continued:

“However, there really are aspects of religion that are bound to be the subject of criticism in public. What about those so-called religions which separate children from their families and which separate converts from their worldly goods? Are we really not allowed to criticise them? Yes, of course we are. It is one of our freedoms under Article 10 of the European Convention on Human Rights that we should be able to do so.”<sup>14</sup>

The Government says its incitement offence does not contravene Article 10 of the Convention (Freedom of expression) and that it safeguards Article 9 (Freedom of thought, conscience and religion).<sup>15</sup> But there is a very real threat the offence would criminalise, for example, a Christian who strongly criticised humanism. If that happened, the new incitement law would restrict both free speech and freedom of religion. It would have contravened *both* Article 10 and Article 9.

After the July 7<sup>th</sup> bombings, there was a significant amount of media discussion of Islam. There were many interviews with ordinary Muslims who condemned the attacks. Other interviews dealt with very serious issues. But some Muslims were ‘in denial’. Journalists interviewed the Chairman of Birmingham’s Central Mosque who said that, in his view, al-Qaeda did not exist.<sup>16</sup> The views of three particular Imams were widely reported and condemned. Omar Bakri Mohammed, cleric for al-Muhajiroun, said he would not tell police if he knew of UK bomb attack plans and supported Muslims who attacked British troops. Abu Izzadeen, spokesman for al-Ghurabaa, would not condemn the July 7<sup>th</sup> bombings and said they would make people “wake up and smell the coffee”. Abu Uzair, former al-Muhajiroun member, told the BBC the September 11<sup>th</sup> attacks were “magnificent” and said Muslims did not “live in peace” with the UK any more.<sup>17</sup> A poll for The Daily Telegraph found that a quarter of British Muslims had some sympathy for the motives of the London bombers and 6% (corresponding to 100,000 people) felt the bombings were “fully justified”.<sup>18</sup>

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<sup>13</sup> House of Lords Select Committee on Religious Offences in England and Wales, Session 2002-03, HL Paper 95-I, vol. 1, para. 133

<sup>14</sup> House of Lords, Hansard, 22 April 2004, cols 446-447

<sup>15</sup> Racial and Religious Hatred Bill, Explanatory Notes, 12 July 2005, para. 29

<sup>16</sup> BBC News Online, 28 July 2005, see [http://news.bbc.co.uk/1/hi/england/west\\_midlands/4723731.stm](http://news.bbc.co.uk/1/hi/england/west_midlands/4723731.stm) as at 12 August 2005

<sup>17</sup> BBC News Online, 9 August 2005, see [http://news.bbc.co.uk/1/hi/uk\\_politics/4133150.stm](http://news.bbc.co.uk/1/hi/uk_politics/4133150.stm) as at 12 August 2005

<sup>18</sup> *The Daily Telegraph*, 23 July 2005

Doubtless there were many Muslims who found this coverage offensive. If the religious hatred law had been in place, many would have looked to the new law to stop this media discussion. Policemen who should have been helping to track down terrorists would instead have spent their time responding to complaints against journalists.

### **Merely plugging an unacceptable loophole?**

The Government has clearly given the impression that it merely wishes to plug a loophole whereby only some religious believers are covered by the race laws (i.e. Sikhs and Jews) and not others. This is misleading and a gross oversimplification. The Home Office states that extending the law:

“...is the closing of an unacceptable loop-hole that mono-ethnic religious groups (such as Jews and Sikhs) are covered by the existing offence whereas multi-ethnic religious groups (such as Muslims and Hindus) are not.”<sup>19</sup>

But what the Home Office calls ‘closing a loop-hole’ is in fact a new offence which takes the law into vast uncharted territory. The race law has always been centred on ethnicity whereas the new law is all about beliefs.

In the name of protecting religion, the Attorney-General and the courts would have unprecedented powers to adjudicate on Jewish and Sikh beliefs as well as all other beliefs including atheism, Buddhism and even Satanism.

The existing law on race covers religion only where it overlaps with race. It applies where the distinctions between race and religion are so minor as makes no practical difference. The leading case on the extension of race laws to cover religion is *Mandla v Dowell Lee*.<sup>20</sup> The headmaster of a private school refused to admit a Sikh pupil unless he removed his turban and cut his hair. The House of Lords ruled that the term ‘ethnic’ in the 1976 Race Relations Act was to be construed in a broad cultural and historic sense. For a group to be an ‘ethnic group’ it had to be a distinct community. It had to have a long shared history and a cultural tradition of its own, often associated with a religion. Sikhs were therefore a group defined by reference to ‘ethnic origins’ even though they were not racially distinguishable from other people living in the Punjab.

On this basis, in certain circumstances, clearly defined Muslim and Christian ethnic groups can also be protected by the race laws. We have already cited the example of, David Wilson, a BNP activist who distributed an anti-Muslim leaflet and was found guilty of stirring up racial hatred and jailed for four months.<sup>21</sup>

To the extent that race laws protect religious belief, it is co-incidental with the goal of tackling racism. It does not justify a wholesale extension of the law into the realm of religious belief.

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<sup>19</sup> “Incitement to Religious Hatred Frequently Asked Questions”, <http://www.homeoffice.gov.uk/comrace/faith/crime/faq.html> as at 6 January 2005. The Parliamentary Under-Secretary of State, Fiona Mactaggart, put it this way: “Present law protects people... against incitement to racial hatred. The courts decided that two religious groups, the Jews and Sikhs, were covered by that protection...” Commons Hansard, 7 December 2004, col. 1101-1102

<sup>20</sup> [1983] 2 AC 548

<sup>21</sup> BBC News Online, 14 November 2002, see <http://news.bbc.co.uk/1/hi/scotland/2473967.stm> and BBC News Online, 24 October 2002, see <http://news.bbc.co.uk/1/hi/scotland/2356837.stm> as at 12 August 2005

## The new religious incitement offence

### Existing offence of inciting racial hatred

Currently, Section 17 of the *Public Order Act 1986* defines *racial hatred* as hatred against a group of persons in Great Britain defined by reference to colour, race, nationality (including citizenship) or ethnic or national origin.

Sections 18 and 19 make it an offence to use threatening, abusive or insulting words or behaviour or display any threatening, abusive or insulting written material or publish or distribute such material with the intention of stirring up racial hatred. It is also an offence if racial hatred is likely to be stirred up thereby, even if that was not the intention.

Section 23 provides that it is an offence for a person to be in possession of racially inflammatory material, whether written or recorded, if he intends publication to stir up racial hatred, or if racial hatred is likely to result.

### The new offence

The new offence inserts the words “or religious” into the existing law on inciting *racial* hatred. And so the new incitement to *religious* hatred offence would mirror the provisions described above.

The penalty for both offences is set at a maximum of 7 years.<sup>22</sup> In 2001 it was said by John Mortimer QC that a person handed down the maximum penalty would be serving the same length of time as the typical rapist.<sup>23</sup>

### Why it will be easier to invoke the law in the field of religion than in race

Religion is all about ideas, beliefs and philosophies. Religion (and irreligion) governs the choices people make between doctrinal, philosophical or moral alternatives. Race and national origin, on the other hand, are immutable characteristics.

Arguments take place between people of different beliefs where people try to convince one another of their point of view. Attempts are made to convince people to change or abandon their religion. Such arguments are not possible over race – because no one can change their race. Bracketing together race and religion fundamentally misunderstands the difference between the two.

Religious controversy is widespread and, for the most part, entirely peaceful. But this law raises the prospect that what currently passes for argument may become regarded as inciting religious hatred. Even ordinary preaching may fall foul of the law.

The existing law on incitement to *racial* hatred is not often used. There have been only 76 prosecutions under the 1986 Act, of which 44 resulted in convictions.<sup>24</sup> Some argue that there should have been more and that there is a lack of political will to prosecute racism.<sup>25</sup> But the low numbers may reflect the declining influence of racist thought and racist groups. However, religious controversy is commonplace, from pubs to pulpits. Our society believes that

<sup>22</sup> *Racist and Religious Crime – CPS Prosecution Policy*, Annex A, section 2. See [www.cps.gov.uk/publications/prosecution/rrpbcrbook.html](http://www.cps.gov.uk/publications/prosecution/rrpbcrbook.html) as at 1 December 2004

<sup>23</sup> John Mortimer QC writing in *The Daily Mail*, 18 October 2001

<sup>24</sup> House of Commons, Hansard, 11 July 2005, col. 607

<sup>25</sup> Melanie Phillips, ‘Religious hatred is evil but it shouldn’t be a crime’, *The Sunday Times*, 21 October 2001

controversy about whether racism is right or wrong is unacceptable. We have collectively decided it is wrong and legislated against it. But at the same time controversy about religious belief is healthy, good and necessary. This means there are bound to be far more opportunities for invoking a law on religious hatred.

### **How will a court decide?**

A court considering an allegation of religious hatred will have great difficulty in deciding whether it falls within the ambit of the law. Racism is fairly easy to identify. Basically, it alleges there is built-in inferiority among certain racial groups.

But how does a judge identify religious hatred? Someone may take the view that a particular religion is inferior. Atheists routinely allege that all religions are mere superstitions and that adherents are therefore intellectually feeble. A claim that all blacks were intellectually feeble would clearly constitute racism. But should an atheist be prosecuted for saying that all religious people are intellectually feeble?

### **How will the new offence operate?**

The Racial and Religious Hatred Bill amends the Public Order Act of 1986 so that the offence of inciting racial hatred is widened to include religious hatred.

To get a conviction under the new offence, the prosecution must prove that a person used “threatening, abusive or insulting words, or behaviour” or displayed any written material which is threatening, abusive or insulting. They must then go on to prove that he *intended* to stir up hatred.

Alternatively, a conviction can still be secured if they can prove that, having regard to all the circumstances, hatred was *likely* to be stirred up. Here the Racial and Religious Hatred Bill amends the existing law on racial hatred to apply a new test to both racial and religious incitement. The Explanatory Notes to the Bill call this a ‘clarification’.<sup>26</sup>

Section 18(1)(b) of the 1986 Act currently says that an offence is committed if: “having regard to all the circumstances racial hatred is likely to be stirred up...”

Under the new Bill this is replaced with:

“...having regard to all the circumstances the words, behaviour or material are (or is) likely to be heard or seen by any person in whom they are (or it is) likely to stir up racial or religious hatred.”

The key phrase is “any person in whom”. The rewording is new and untested. It would have unpredictable consequences. Nobody knows how many prosecutions could be brought under it.

This goes much wider than intentional stirring up of hatred. As far as religious liberty goes, this part of the clause represents the greatest threat.

If the prosecution falls back on alleging that a person’s actions were *likely* to stir up religious hatred, it is a defence for the accused to show that he did not intend his words, behaviour or material to be “threatening, abusive or insulting” *and* that he was not aware that it might be. If he was aware, he cannot rely on this offence. In this age of greatly heightened religious sensitivities, few people can claim to be ignorant of the possibility that religious controversy “might be” regarded as insulting.

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<sup>26</sup> Racial and Religious Hatred Bill, Explanatory Notes, 12 July 2005, para. 4

Worse still, as a Home Office minister recently made clear, belief in the truth of your statement is no defence.<sup>27</sup>

It is easy to envisage how those engaged in religious debate might fall foul of such a widely drafted definition of “religious hatred”. The examples on page 15 illustrate this.

Some argue that we can rely on the common sense of judges to see to it that only genuine cases of religious hatred result in convictions. But judges are charged with applying the law as it is drafted. The law as currently proposed is wide-open to the kind of draconian interpretation which many predict.

Furthermore, as some have argued, the law will have a ‘chilling’ effect on free speech. Before a judge ever gets to hear a case under the new law, individuals will be making assessments of whether they feel their actions might fall foul of it and many will self-censor what they say as a result. Still others will allege broad interpretations of the new law in order to threaten those with whom they disagree. Some complaints will result in police investigations. Some investigations will result in arrests. By this point free speech has already been curtailed. Some will be charged and referred to the Crown Prosecution Service.

Section 27 of the 1986 Act requires the consent of the Attorney General before a prosecution is commenced. But this too fails to provide sufficient safeguard. So long as the law allows for a broad interpretation of religious hatred, there will always be the prospect of investigations, arrests and unjust prosecutions.

### **No definition of “religion”**

The Bill does not define religion; it simply says that “‘religious hatred’ means hatred against a group of persons defined by reference to religious belief or lack of religious belief.”<sup>28</sup>

This leaves it open to groups such as the Scientologists using the offence to assert their legitimacy as a religion, by demanding prosecution of those who deride their beliefs. The more vociferous atheist campaign groups can also be expected to invoke the new law against those who condemn irreligious behaviour.

### **Churches not excluded**

It is worth noting that, whilst the offence excludes behaviour which takes place within a “dwelling”,<sup>29</sup> this exception does not extend to churches or other places of worship. Sunday morning sermons are therefore within the ambit of the bill. Somebody may take the view that a sermon on the uniqueness of Christ as the way of salvation incites religious hatred in a member of the congregation against people of a particular religion. The police, the Attorney General and possibly the criminal courts may thus become involved in deciding whether this was so. This might seem unlikely now, but what will happen in five, ten or twenty years’ time?

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<sup>27</sup> House of Commons, Standing Committee E, Racial and Religious Hatred Bill 2005, Third Sitting, 30 June 2005, col. 98

<sup>28</sup> Racial and Religious Hatred Bill 2005

<sup>29</sup> Public Order Act 1986, Section 18(4)

## A divisive law

A new incitement offence would seriously harm freedom of speech because it would be used by those who are hostile to certain religious ideas. It would set groups of religious (or irreligious) believers against each other.

The House of Lords Select Committee considered the position in India. It reported a warning by the country's Attorney-General, Soli Sorabjee, that India's legislation against religious hatred is proving counter-productive:

“experience shows that criminal laws prohibiting hate speech and expression will encourage intolerance, divisiveness and unreasonable interference with freedom of expression. Fundamentalist Christians, religious Muslims and devout Hindus would then seek to invoke the criminal machinery against each other's religion, tenets or practices. That is what is increasingly happening today in India. We need not more repressive laws but more free speech to combat bigotry and to promote tolerance”.<sup>30</sup>

On 17<sup>th</sup> December 2004, two Christian pastors in Australia were found guilty of 'religious vilification' because they criticised Islam.<sup>31</sup> A court in the southern Australian state of Victoria held that the two pastors had breached section 8 of the Racial and Religious Tolerance Act 2001 which bans conduct which "incites hatred".<sup>32</sup> On 21<sup>st</sup> June the court effectively banned the pastors from any criticism of Islam in the future. If they fail to publish an apology to the Islamic Council of Victoria they face a possible jail sentence.

A case was brought against the two pastors following comments made by them in a church seminar in March 2002.<sup>33</sup> The comments included drawing attention to the teaching of the Koran and questioning Islam's compatibility with Western democracy. Shortly after the seminar the Islamic Council of Victoria filed a legal action against the pastors.<sup>34</sup> This case shows that an 'incitement to religious hatred' offence is likely to be used by some well-organised religious groups to silence criticism of their religion. (The Liberal party in Victoria, who originally supported the law, have now called for an urgent review. Some Muslim leaders now regard the law as undermining religious freedom and Melbourne's Roman Catholic and Anglican Archbishops are also voicing concern.<sup>35</sup>)

The proposed 'incitement to religious hatred' offence will encourage divisiveness and could even lead to mob reaction in order to instigate a prosecution. Here in the UK in December 2004 a violent demonstration by hundreds of Sikhs led to the cancellation of a controversial play.<sup>36</sup> The play, written by female Sikh author Gurpreet Kaur Bhatt, is about the hypocrisy of a man who is an apparently upright member of the Sikh community but who inside a Sikh temple abuses boys and girls. The demonstrators claimed the

<sup>30</sup> Sorabjee, S, 'Freedom of Expression in India', in *Developing Human Rights Jurisprudence*, vol. 7, Commonwealth Secretariat, 1999, pages 129-142 cited in House of Lords Select Committee on Religious Offences in England and Wales, Session 2002-03, HL Paper 95-I, vol. 1, para. 52

<sup>31</sup> *Guardian Unlimited*, 17 December 2004 see <http://www.guardian.co.uk/print/0,3858,5088343-110732,00.html> as at 6 January 2005

<sup>32</sup> The Victoria Act is more broadly drawn than the current UK Government's proposal, but it also contains a broad exception for reasonable public debate. There is no equivalent in the Racial and Religious Hatred Bill.

<sup>33</sup> *The Times*, 9 November 2004

<sup>34</sup> *The Australian*, 18 December 2004, see <http://www.theaustralian.news.com.au/printpage/0,5942,11722782,00.html> as at 6 January 2005

<sup>35</sup> *The Herald-Sun*, 29 June 2005

<sup>36</sup> BBC News Online, 19 December 2004, see [http://news.bbc.co.uk/1/hi/england/west\\_midlands/4107437.stm](http://news.bbc.co.uk/1/hi/england/west_midlands/4107437.stm) as at 6 January 2005

play mocked their faith. Some demonstrators broke the law with acts of violence and damage to property. Such strong reactions could be encouraged by an 'incitement to religious hatred offence' if protestors believe it could lead to a prosecution against those who criticise their faith. The BBC reported that "The government's proposals for laws to ban incitement to religious hatred had been blamed for exacerbating the protests."<sup>37</sup>

In 2001 the Mysticism and Occult Federation made multiple complaints to the Radio Authority against Premier Christian Radio in London. They objected to them airing preachers warning of the dangers of dabbling in the occult. Surprisingly, the Authority upheld some of their complaints.<sup>38</sup> It is likely that a religious hatred offence would be used by such groups in a similar way.

Christians in Britain already worry that existing criminal law is being wrongly turned on them. The proposed new law could lead to a climate of fear.<sup>39</sup>

In 2002 Harry Hammond, an autistic pensioner, was convicted under the 1986 Public Order Act for preaching in the street while holding a placard with the words "Stop homosexuality. Stop immorality".<sup>40</sup> The court held that equating homosexuality with immorality met the definition of "insulting" for the purposes of the criminal law. (This means publicly referring to a religion as "immoral" can be regarded as insulting under this Bill.)

Attempts have already been made to stop responsible evangelism to Muslims. Take the case of Milnrow Evangelical Church, near Rochdale in Lancashire. The Church distributes thoughtful Christian literature to Muslim homes. Local Muslims also distribute their own literature to non-Muslims. In June 2002 a church member was visited by two Police Officers who told him he had committed a serious racial offence by distributing the Christian literature to Muslims. He was told his name would go on police records and that they would file a report, implying that a prosecution could follow.

At this point many Churches may have backed down, but the Pastor of the church was a former Police Officer. He took legal advice from a leading human rights lawyer which confirmed that the Church had not broken any law and the police had acted wrongly. A robust official complaint was made. Thankfully the police responded by meeting with those concerned to confirm that no offence had been committed and by writing a conciliatory letter. But this case shows the danger of how laws not intended to suppress religious freedom can easily do so. A new religious incitement offence would have made the situation substantially worse.

The Government says the word 'hatred' used in the proposed law is a strong one and is convinced that the new law will not catch "legitimate discussion, criticism, or expressions of antipathy or dislike of particular religions or their adherents..."<sup>41</sup> But who is to define what is 'legitimate'? How can it be appropriate for the Attorney General and judges to have power to adjudicate on people's religious beliefs? Surely the evidence shows how dangerous and divisive an incitement to religious hatred offence would be.

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<sup>37</sup> BBC News Online, 21 December 2004, see [http://news.bbc.co.uk/1/hi/england/west\\_midlands/4112985.stm](http://news.bbc.co.uk/1/hi/england/west_midlands/4112985.stm) as at 6 January 2005

<sup>38</sup> Radio Authority Quarterly Complaints Bulletin, July-September 2001 and *The Spectator*, 24 November and 8 December 2001

<sup>39</sup> Although Northern Ireland has had an incitement to religious hatred offence for many years, prosecutions are rarely brought for fear of inflaming sectarian hatred in the Province - House of Lords Select Committee on Religious Offences in England and Wales, Session 2002-03, HL Paper 95-I, vol. 1, Appendix 5, para 4

<sup>40</sup> *The Times*, 25 April 2002 and *The Mail on Sunday*, 28 April 2002

<sup>41</sup> Racial and Religious Hatred Bill, Explanatory Notes, 12 July 2005, para. 28

## Examples of what could happen under the new incitement law

Conspicuously absent from all the parliamentary debates is a single clear example from the Government of activity that it intends to be caught by the new law but that is not *already* illegal under existing law. Below we give several examples of how we believe the new law may operate in practice.

- A journalist writes a piece for a national newspaper describing Islam as a war-mongering religion. He cites the July 7<sup>th</sup> bombings and the July 21<sup>st</sup> attacks and quotes Islamist preachers who have praised the actions of the terrorists. A Muslim organisation calls for prosecution. A reader of the newspaper gives a witness statement to the effect that he “was almost drawn in” by the article. He realises now that he was wrong, but he confesses that, when he read the article, he believed it. There is widespread comment about the case in the press and enormous pressure on the CPS to prosecute.
- A Muslim Imam is well-known for speaking out against the Jewish belief that Israel is a land given to the Jews by God. A Jewish campaign group complains that his actions incite hatred against them.
- A journalist writes an article saying that the Scientologists are an evil cult. Previous official rulings have denied Scientology the status of a religion. However, since the new offence includes no definition of religion, Scientologists report the journalist to the police, claiming that he is inciting religious hatred against them.
- A Protestant church leader preaches from his pulpit that the Pope is the Anti-Christ. This is a belief held by a significant minority of sincere Protestants. As a result of a complaint from a Roman Catholic, a file is prepared and sent to the Attorney General.
- A journalist writes an article arguing that Freemasonry amongst the police and judges is a wicked conspiracy which corrupts the judicial system. Freemasons, noting that the Bill contains no definition of religion, argue that the journalist has incited religious hatred.
- A Sikh journalist writing in a Sikh newspaper argues that Muslims in Kashmir are “wicked butchers” and “less than human” for killing 35 Sikhs in a massacre in Kashmir in March 2000. A militant Muslim group in the UK reports the journalist to the police and presses for a prosecution to be brought against him.



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