

Anti-terrorism, Crime and Security Bill : Part 5

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

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## Parliamentary consideration of the Bill

### ANTI-TERRORISM, CRIME AND SECURITY BILL

#### Commons:

1<sup>st</sup> Reading: 12 November 2001    2nd Reading :19 Nov 2001  
Committee (1st Day) : 21 Nov 2001  
Committee (2<sup>nd</sup> Day) & Remaining Stages: 26 November 2001

#### Lords:

1<sup>st</sup> Reading : 26 November 2001  
2<sup>nd</sup> Reading : 27 November 2001  
Provisional Committee Days: 28 & 29 November; 3 & 4 December  
Provisional Report Days : 6 & 10 December  
Provisional Third Reading : 11 December

#### Select Committee on Home Affairs:

Report with Minutes of Proceedings, together with Minutes of Evidence and Appendices  
19 November 2001 HC 351 ISBN 0 10 500040 4

Committee consideration of Religious hatred offences (clause 38)

Summary of Conclusions

Evidence given by Liberty Questions 90 - 99  
Memorandum submitted by Muslim Organisations Appendix 14

#### Joint Committee on Human Rights:

16 November 2001 Second Report Anti-Terrorism, Crime and Security Bill  
Report, together with the Proceedings of the Committee relating to the Report and Minutes  
of Evidence  
HL 37 HC 372 ISBN 0 10 402602 2  
Committee consideration of Part 5 of the Bill: Race and Religion

See also Minutes of Evidence Questions : 48 - 52

#### Unstarred Question : Lord Campbell of Alloway

Lords Hansard 21 November 2001 cols 1223-1234 Religious Hatred

## What people have said about the incitement proposals

Leading Muslim Organisations

*On the new incitement offence*

“The extension of incitement legislation at this particular time is unlikely to protect Muslims. We have grave reservations about the introduction of legislation at this particular time.

...Investigation and detection will require law enforcement agencies (the police in particular) to cast their net wider which may have two significant consequences

- Heavier policing and investigation of the whole of the Muslim community...
- A deterrent and ‘chilling’ effect on the legitimate free speech of all Muslims...”

Dr Zaki Badawi, The Muslim College

Dr Syed Aziz Pasha, Union of Muslim Organisations

And six other leading Muslim organisations

(Memorandum to Home Affairs Select Committee, November 2001)

John Wadham, 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...”

It seems to me that there is a difference between incitement to hatred in relation to race and incitement in relation to religion...In religious hatred the mischief is actually inciting people to hate the ideas of a religion. That is something we have to allow.”

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

John Mortimer QC

“Do we seriously intend to go back two centuries because some religious zealot committed an act of gross and inhuman terrorism?

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

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

Matthew Parris

“Glenn Hoddle's remark that the disabled may be 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 reincarnationalism?”

The new law will lead to trouble and confusion. Leave it alone, Mr Blunkett.”

*The Times*, 13 October 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.”

The Pink Paper, 9 November 2001

“...the Home Office's reassurances have done little to pacify gay and lesbian rights campaigners, such as Peter Tatchell, who fear the law could be used to silence protests against religious bigotry.”

## Summary

Following the terrorist atrocities of September 11<sup>th</sup> attacks have been reported on Mosques. There has even been an attack on a Church. The Home Secretary wants to deal with this problem and protect people from verbal abuse and physical attack because of their religion.

Part 5 of the Anti-Terrorism, Crime and Security Bill creates two new offences to deal with religious hatred.

1. Incitement to hatred on the grounds of religion
2. Religiously aggravated offences

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

- It will harm freedom of speech. It has the potential to criminalise ordinary religious debate.
- The Attorney General and judges should not be required to adjudicate on people's religious beliefs.
- Some cults are litigious. The new offence will enable them to silence their strongest critics.
- 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.

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 make use of this new law if it is passed. But we do not believe it would be right to do so.

The law on religiously aggravated offences (Clause 40) has attracted little controversy because it appears only to make an existing offence more serious. However, the new measures against inciting religious hatred (Clauses 37-39 and 41-42) are causing serious alarm.

According to the Bill 'religious hatred' means "hatred against a group of persons defined by reference to religious belief or lack of religious belief."<sup>1</sup> For this reason everyone from atheists to animists and humanists to Hindus has cause to worry. The proposed law is so vague in definition and full of uncertainty that Muslims, Christians, Humanists and even gay rights protestors are objecting to it. Yet despite the reach of the new law there has been no widespread consultation.

Although the proposals are a genuine attempt to protect innocent people they have huge potential to backfire.

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<sup>1</sup> Anti-terrorism, Crime and Security Bill 2001, clause 39

## Clause 40 : Religiously aggravated offences

The effect of Clause 40 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 this new offence is that a crime *must already have been committed*. It only operates in tandem with a prosecution for an existing offence such as assault or harassment. Clause 40, unlike the other Clauses in Part 5 of the Bill, does not create a free-standing offence.

Clause 40 is modelled on the existing law on racially aggravated offences. Some 22,000 cases have been considered under that law and there have been 4,000 prosecutions.<sup>2</sup>

The Conservatives and the Liberal Democrats support Clause 40. However, others are not so sure. The new law may have a greater impact than many realise.

Neil Addison is the author of *Harassment Law and Practice*, published by Blackstone Press, one of the leading legal publishers. He wrote to *The Times* on 24 November 2001, pointing out that prosecutions for religiously aggravated harassment can be brought by means of private prosecution. He argued,

“Harassment is a subjective and unpredictable allegation and the creation of religiously aggravated harassment offences will provide a mechanism for the bringing of prosecutions by every religious extremist or cult which feels it has somehow been ‘harassed’. These potentially dangerous proposals could affect anyone in the country with a religious or anti-religious point of view. They should certainly not be rushed through Parliament simply ‘tagged on’ to an anti-terrorism Act.”

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<sup>2</sup> House of Commons, Hansard, 19 November 2001, col 36

## Clauses 37 – 39 and 41 – 42: Religious hatred offences

The position of religious believers under the existing criminal law

The aim of the new offence of inciting religious hatred is intended to protect religious believers. Of course, 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.

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, which brackets religious hatred with racial hatred, will see the penalty for both offences set at a maximum of 7 years – up from the current maximum of 2 years for inciting racial hatred. A person who was handed down the maximum penalty would be serving the same length of time as the typical rapist.<sup>3</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

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<sup>3</sup> John Mortimer QC writing in *The Daily Mail*, 18 October 2001

characteristics. Statements about these issues deal in matters which cannot be changed and about which there is no right or wrong.

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 between people of different races – only between people of different religions. 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.

According to the Attorney General's Office, since 1997 there have only been 32 attempted prosecutions for inciting racial hatred, 17 of these resulted in convictions.<sup>4</sup> Some argue that there should have been more and that there is a lack of political will to prosecute racism.<sup>5</sup> But the low numbers may reflect the declining influence of racist thought and racist groups. Religious controversy is commonplace, from pubs to pulpits. Our society believes that 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?

Part 5 of the Anti-terrorism, Crime and Security 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. This goes much wider

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<sup>4</sup> House of Commons Library Research Paper 01/96, 16 November 2001, page 53

<sup>5</sup> Melanie Phillips, 'Religious hatred is evil but it shouldn't be a crime', *The Sunday Times*, 21 October 2001

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.

However, 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 the following page 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. And the law as currently proposed is wide-open to the kind of draconian interpretation which many predict.

Furthermore, as Muslims have argued, the law will have a 'chilling' effect on religious 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 restrict their behaviour as a result. Still others will allege broad interpretations of the new law in order to threaten those with whom they disagree.

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 unjust prosecutions of the kind envisaged in this briefing.

No definition of "religion"

The Home Secretary has explicitly ruled out including a definition of religion in the bill. 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, while the offence excludes behaviour which takes place within a "dwelling",<sup>6</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. 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>6</sup> Public Order Act 1986, Section 18(4)

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

- 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 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 Protestant church leader from Northern Ireland preaches from his pulpit that the Pope is the Anti-Christ. This is a belief held by 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.
- The Gay and Lesbian Humanist Association complains that a Roman Catholic Cardinal has incited hatred against them for saying on television that "homosexual practice is an abomination and perverted". They argue that their particular brand of atheism, in which homosexuality is strongly endorsed, constitutes a religion which deserves the protection of the new offence.
- A vicar sends his monthly church newsletter to every home in his parish. In the newsletter the Vicar encourages his flock to support an organisation engaged in Christian evangelism in Israel. The organisation preaches specifically to Jews, teaching that Jesus Christ is the Messiah and that Jews should convert to Christianity. A Jewish barrister in the parish is deeply offended by the newsletter and campaigns for the vicar to be prosecuted for inciting religious hatred against Jews in Israel. (The bill specifically covers incitement against people outside the UK.) The vicar writes to the barrister, explaining that he did not intend to cause any offence. The barrister replies by claiming that the vicar should have been aware that his writing was "abusive or insulting" (Section 18(5) of the Public Order Act 1986) and that having regard to all the circumstances, it was obvious that hatred was "likely to be stirred up thereby" (Section 18(1)(b) of the 1986 Act)

- 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 last year. A militant Muslim group in the UK reports the journalist to the police and presses for a prosecution to be brought against him.
- A Nigerian church leader based in London regularly preaches against Muslims in Nigeria who are seeking to impose Sharia law. He argues that Muslims in Nigeria are intolerant of other faiths and are persecuting Christians in that country. He compares Muslim Leaders in Nigeria with Nazis. He points out that the Muslims claim what they are doing is in accordance with the Koran. He urges Nigerian members of his congregation to speak out against what Muslims are doing in Nigeria and to write to their MPs. The Nigerian Embassy urges the Attorney General to prosecute the church leader for inciting religious hatred of a foreign religious group (covered under the Bill).



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