

BHA BRIEFING 2005/11: RACIAL AND RELIGIOUS HATRED BILL

The case for the law is plain: an open and plural society has a duty to protect vulnerable minorities from those who try to stir up hatred against them. The victims of such hatred include those targeted by racists but also some – including apostates from Islam – persecuted for purely religious reasons. But, as the Lords Select Committee on Religious Offences recognised, **the gap in the law is a narrow one and other laws can deal with most of the current problems. The offences created by this Bill are too wide and threats to free speech outweigh the protection it offers.**

Our position, unchanged since this measure was first proposed four years ago, is motivated by a genuine desire to protect those who have hatred incited against them, while avoiding any censorship – or self-censorship – of legitimate discourse relating to religion and belief. **Without all the amendments below, we consider the new law would do more harm than good and should be rejected by Parliament.**

This briefing sets out our main concerns with the Bill. **We believe that its problems originate in the decision merely to tack "or religious" onto "racial" in the Public Order Act. We have always believed that a separate law on hatred based on religion or belief would be preferable.**

Strong and contrary views are legitimate about religion where they are not about race:

- Religions make extensive and often mutually incompatible claims about the nature of life and the world – claims that can legitimately be appraised and argued over.
- Religions set out to (and often do) influence their followers' attitudes and behaviour, often in ways which can be similarly controversial.
- Religions are in principle (and often in practice) in competition with each other.
- Religions are expressed through organisations that are often wealthy and powerful.
- They exercise that power in the name of their faith far outside the realm of religion – influencing social attitudes and national and international policies (e.g. on AIDS, contraception, and limits on freedom of speech).
- Religious believers often feel bound by a duty to react strongly to any criticism or insult offered to their deities, prophets or beliefs, however mild or reasonable. Some religious cults are notoriously litigious.

There are no parallels to these points in the case of race.

It must therefore remain unquestionably legal to be outspoken about religions, especially given that the Bill will protect not just believers in the major world religions but dupes of every cult from dangerous 'healers' to child-exorcisers. In these circumstances and given that there is no defence of justification in the Bill, legitimate free speech must sometimes include:

- using abusive and insulting language about religions or beliefs,
- speech that may incite hatred of the beliefs, institutions and practices of a religion or cult (but not of its followers),
- denouncing the actual harm done by persons motivated by their religious beliefs.

Amendments Needed

"Religious hatred": The Bill uses the apparently convenient shorthand phrase "stir up religious hatred". This has created the widespread impression that what is being protected is religion rather than people. Opponents of the proposal get an exaggerated view of its effect on free speech, and some supporters of the proposal welcome the Bill in the mistaken belief that insults to their religion will become illegal. The answer is to forgo the shorthand and draft the law throughout in terms of stirring up hatred against persons based on their "membership (or presumed membership) of a religious or belief group", which the Bill should define as "a group defined by reference to religion or belief or the absence of any, or any particular, religion or belief". The change would clarify, without weakening, the Bill. It is impossible to understand why the Home Office refuses to make this change.

Unintended incitement: The Bill would allow prosecution when the words are merely likely to be heard by someone in whom hatred is likely to be stirred up. This is too low a barrier to protect legitimate free speech around religion and belief and this criticism is not answered when the Government says that prosecutions will be at the discretion of the Attorney General – the problem of self-censorship engendered by misunderstanding of the law is just as great. Furthermore, the law should not risk police investigations of citizens who should never be liable to criminal prosecution.

Clause 18b should be amended to read:

(b) in circumstances in which such hatred is likely to be stirred up, he recklessly risks that hatred against a racial or religious group will thereby be stirred up.

Defence of denunciation of harm: In their common discourse, people do not readily distinguish between the believer and those actions of the believer that are motivated by their belief. When they are criticising the belief, they will criticise the believer.

They do this, for example, when denouncing actual harm done. The denunciation of actual harm done by religion or religious bodies or cults must therefore be declared on the face of the Bill not to be an offence. The discretion of the Attorney General is not a sufficient guard against the potential for innocent people being arrested or subject to official harassment. We do not have a wording to suggest for such an amendment, but the sentiment would be:

A person shall not be guilty of an offence under sections xx to yy if stirring up hatred against a religious group was incidental to revealing harm done by or reasonably believed by him to be done by the religious group in question.

Any defence framed would have to exclude its being used as a cover by racists – this would be the function of a word like ‘reasonably’.

Definition too narrow: The Bill defines "religious hatred" in a way that excludes non-religious beliefs from protection but the Human Rights Act at s.6 bars legal or official discrimination on grounds of "religion or belief", where "belief" has been established by case law to include non-religious beliefs or world-views such as Humanism. The Bill says: "'religious hatred' means hatred against a group of persons defined by reference to religious belief or lack of religious belief." But Humanism is a positive belief, not merely the lack of religious belief – a point that the Government fails time and again to understand. The answer is to use the term "religious or belief group" and define it by reference to religion or belief as set out above. If a definition of ‘belief’ is required (which we doubt, given the case law) it should be by reference to the meaning of the word in Schedule 1 of the Human Rights Act.

Balance to be struck with freedom of speech: The Bill should require the Attorney General, in deciding whether to authorise any prosecution, to balance the potentially conflicting rights guaranteed under Articles 9 (freedom of thought, conscience and religion) and 10 (freedom of expression) of the European Convention on Human Rights (incorporated into the Human Rights Act 1998).

Need for Parliamentary scrutiny: The Bill should require the Attorney General to lay an annual report before Parliament on how he exercises his discretion. The following new sub-sections should be added to section 27 (which confines the institution of proceedings to the Attorney General):

(1A) In deciding whether to authorise a prosecution the Attorney General shall balance the rights set out in Articles 9 and 10 of the European Convention on Human Rights and in particular shall consider whether the act or acts of the proposed defendant stirred up hatred of a racial or religious group in such a way as to be a threat to public order and the safety of a racial or religious group. In reaching his decision the Attorney General shall consider any opinions offered to him (in the case of race) by the Commission for Racial Equality.

(1B) The Attorney General shall lay before Parliament annually a report on the way in which he has exercised his discretion under this section.

Need to abolish blasphemy law: If a law is introduced against inciting hatred of persons on grounds of their religion or belief, abolishing the blasphemy law at the same time as bringing in the new law would give the clearest possible message that the Bill prohibits incitement of hatred of people, not beliefs. At the very least, the Home Secretary should announce immediately that he is minded, subject to early consultations, to abolish the blasphemy law.

A new clause should be added to the Bill:

The common law offences of blasphemy and blasphemous libel are hereby abolished.

Contact Hanne Stinson: hanne@humanism.org.uk or 020 7079 3583 for further information.