



Religious Hatred: Attempts to legislate 2001-2005

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In June 2005 the Government introduced the *Racial and Religious Hatred Bill 2005-06* in the House of Commons. The Bill represented the Government's third attempt to outlaw incitement to religious hatred. Provisions had been included in both the *Anti-Terrorism Crime and Security Bill* and the *Serious Organised Crime and Police Bill*. These previous attempts fell as a result of Parliamentary opposition, particularly in the House of Lords.

This note sets the attempts to outlaw religious hatred following the attacks on 11 September 2001, but before the introduction of the *Racial and Religious Hatred Bill* in 2005. Information about that Act, and the progress of the Bill through Parliament, is contained in a separate Standard Note, SN/PC/3768, [The Racial and Religious Hatred Act 2006](#).

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1 Background

Following the terrorist attacks in New York and Washington DC in September 2001, David Blunkett, the then Home Secretary, announced that “we do need specific and targeted measures, which is why I intend to introduce an emergency anti-terrorism Bill”.

He went on to say:

The events of 11 September have led to a new determination to co-operate at European and international level. Terrorists do not respect national boundaries. In line with the Europe-wide endeavour, I intend to include in the emergency Bill an enabling power to allow implementation by affirmative order of measures from the Justice and Home Affairs Council on police and judicial co-operation.

Regrettably, there are those who are prepared to exploit the tensions created by the global threat. Racists, bigots, and hotheads, as well as those associating with terrorists, are prepared to use the opportunity to stir up hate. It is therefore my intention to introduce new laws to ensure that incitement to religious, as well as racial, hatred will become a criminal offence. I also intend to increase the current two-year maximum penalty to seven years.¹

David Blunkett’s concerns about the tensions appeared well-founded, as organisations such as the Islamic Human Rights Commission reported an “anti-Muslim backlash” in the wake of the events of 11 September 2001.² The European Monitoring Centre on Racism and Xenophobia commented on the situation in the United Kingdom in a report covering the immediate aftermath of the attacks on the World Trade Centre (to the end of 2001):

A significant rise in attacks on Muslims was reported across a range of media in the immediate aftermath of September 11. Numbers of incidents of violent assault, verbal abuse and attacks on property were noted, some of which were very serious.³

Even before David Blunkett’s statement it was reported that “the decision to widen the law on incitement to include religious as well as racial hatred comes in response to a request from Muslim leaders in Britain. They called for greater protection after attacks on Muslims”.⁴ On 14 September 2001, just three days after the attacks, the Muslim Council of Britain had expressed its concerns about the fear of reprisal among Muslims:

As the world grieves, British Muslims also worry about acts of reprisal and hatred directed against them, fuelled in some cases by irresponsible media reporting and commentary. At such a time it is essential that politicians of all parties provide responsible leadership, that they refrain from unsupported wild speculation, that they make clear the distinction between the guilty and the innocent. They must take the lead in denouncing the slur of guilt by imagined association where none exists. We must guard against glib rhetoric that exacerbates false animosity. To fail would create an awful void in mutual understanding and mutual respect that can only feed the very evil we all seek to eradicate.⁵

¹ HC Deb 15 October 2001 c923

² Ian Herbert and Ian Burrell, “Dossier reveals a massive rise in attacks on British Muslims”, *Independent*, 4 January 2002

³ European Monitoring Centre on Racism and Xenophobia, Summary Report on Islamophobia in the EU after 11 September 2001, May 2002, p29, http://eumc.eu.int/eumc/material/pub/anti-islam/Synthesis-report_en.pdf

⁴ George Jones, “Law to curb religious hatred”, *Daily Telegraph*, 3 October 2001

⁵ Muslim Council of Britain Press Release, *Statement by the Muslim Council of Britain on the occasion of the special House of Commons debate*, 14 September 2001

The Muslim Council of Britain has also linked its calls for a change in the law to the activities of the British National Party. In July 2004, it argued that the BBC documentary *Secret Agent*, which infiltrated BNP meetings, underlined “the urgent need for the government to introduce legislation not only outlawing incitement to religious hatred but ensuring that it is unlawful to discriminate against anyone on religious grounds”.⁶

The Muslim community has subsequently received wider support from other faith groups. In January 2005, the Churches Commission on Inter Faith Relations issued a statement, signed by members of a number of faith communities, in support of the proposed change to the legislation, in which it noted:

Faith community organizations have for some time been urging the Government to legislate against incitement to hatred on grounds of religious identity and in April 2004 a number of faith leaders signed a statement to this effect.⁷

2 *Anti-Terrorism Crime and Security Bill 2001-02*

On 12 November 2001, the Government introduced the *Anti-Terrorism, Crime and Security Bill* (the Bill promised in Blunkett’s statement of 15 October 2001). Clause 38 of the Bill would have had the effect of amending Part 3 of the *Public Order Act 1986* “to extend the existing provisions on incitement to racial hatred to cover incitement to religious hatred”.⁸

During the course of the second reading debate, on 19 November 2001, David Blunkett explained the rationale for the provision:

Part 5 covers issues that relate to the controversy that has arisen in respect of religious hate. For the sake of clarification, I again want to put on the record what we seek to do. The debate on this subject has been going on for a long time. We were approached by leaders of the Muslim community—it was a representative leadership group—who thought that it was only right, fair and protective to include religion with race in terms of avoiding incitement to hate using the Public Order Act 1986. I considered that and decided that their point was fair and reasonable. That suggestion was also made when the Crime and Disorder Act 1998 went through Parliament and the Opposition pressed us hard to implement it. At the time, my right hon. Friend the Home Secretary, who is now Foreign Secretary, accepted that there was a reasonable case for keeping it under review, but that it would not be introduced then.

Since then, others from the Muslim community—representative or otherwise—have said that they do not like the idea. It has been suggested—I heard people say this as recently as this morning on the radio—that it might be used against Muslims. That is true; it might, because Muslims are no less subject to the law than Christians, Hindus, Jews or anyone else. I do not want gesturism. I hope that the provision will protect all those who have deeply held religious beliefs from having that faith used to incite hatred against them. This is a public order Act, and it is the order that we are talking about. To be prosecuted, the power has to be used against the perpetration of threatening, abusive or insulting words or behaviour with—this is the crucial phrase—the intention and likelihood that racial hatred would be stirred up. That is the crucial element.

[...]

⁶ Muslim Council of Britain Press Release, *BNP documentary underlines urgent need for incitement legislation*, 4 July 2004

⁷ The Churches Commission on Inter Faith Relations is one aspect of the work of the Churches Together in Britain and Ireland. It is affiliated to the Inter Faith Network of the United Kingdom.

⁸ *Anti-Terrorism, Crime and Security Bill*, Bill 49 2001-02, Explanatory Notes, para 105

The case is to be adjudged by the Attorney-General and brought only if he believes that there is a case to be heard. That brings the law into line with those of the Jewish or Sikh faith who have already been adjudged by the courts to be covered by the term "race".⁹

The Home Affairs Committee, which had examined a draft version of the Bill, doubted whether measures to extend the offence of incitement to racial hatred to cover incitement to religious hatred would work in practice and noted that some Muslim groups had similar doubts. It recommended that the measures were not included in the Bill:

We have not seen sufficient evidence to justify the proposition that extending the law of incitement to include religious as well as racial hatred will work in practice. The proposals in the Bill would be difficult to enforce. We note in particular the evidence from a group of distinguished Muslim organisations and individuals: "we have grave reservations about the extension of this criminal power to cover religious groups at this particular time." We therefore see no reason for this measure to be included in this emergency terrorism Bill.¹⁰

During the Bill's report stage in the House of Lords, an amendment to remove the whole clause (by then clause 39) was passed by 240 votes to 141.¹¹

When the Bill returned to the House of Commons on 12 December 2001, the clause, with the provision for the Attorney General to issue guidance, was reinstated. There was a small Labour rebellion— but the Government's amendment was supported by 307 to 236 votes.¹²

The following day, the House of Lords considered the Commons amendment, and again insisted that the clause be left out of the bill. Lord Campbell of Alloway moved an amendment to insist that the clause was left out of the Bill.¹³ Lord Campbell's amendment was agreed by 234 (Contents) to 121 (Not-Contents).¹⁴

Later on the same day, the Government accepted in the Commons that they could not insist that the clause stay in the Bill and David Blunkett conceded that:

I come to part 5. Coming from Sheffield, I am familiar with the old nursery rhyme about the grand old Duke of York. So I have marched myself up to the top of the hill and I am about to march myself down again. Before anyone can quip about giving way gracefully or otherwise, I shall ask the House to give way to the House of Lords, which has voted twice to remove the incitement to religious hatred from the Bill. [Hon. Members: "Hear, hear!"] There we have it.

There will be consequences. Every decision that we take—be it this House, the House of Lords or people in their individual lives—has consequences. Some people's attitude is, "We really agree with this proposal and we think that in the long term it would be a good thing to do, but this is not the time or the Bill and we did not agree with every word so we will reject it." [Interruption.] Those people will need to reflect in a year's time on where the new Bill is, not least those Liberal Democrats who are heckling me. After all, they have suggested that we should re-examine every aspect of this Bill, to

⁹ HC Deb 19 November 2001 cc34-35

¹⁰ Home Affairs Committee, *Terrorism, Crime and Security Bill 2001*, 19 November 2001, HC 351 2001-02, para 61 [emboldened in the Committee's report]

¹¹ HL Deb 10 December 2001 c1193

¹² HC Deb 12 December 2001 c948

¹³ HL Deb 13 December 2001 cc1452-1453

¹⁴ *Ibid* c1463

the point where no time or space would be available to table a separate small Bill on incitement to religious hatred.¹⁵

3 *The Religious Offences Bill [HL] 2001-02*

On 8 January 2002, Lord Avebury introduced a three-clause bill – the *Religious Offences Bill* – to abolish certain religious offences and to amend the *Public Order Act 1986* to include religious hatred offences.¹⁶

During the course of the second reading debate on 30 January 2002, Lord Avebury explained that clause 2 of his bill was “identical to the provisions on incitement to religious hatred that were left out of the anti-terrorism Bill”.¹⁷

Lord Campbell of Alloway argued against the Bill. He considered it would pre-empt discussion between different religions that was necessary to achieve consensus between the religions before any attempt to legislate in the areas covered by the Bill should begin.¹⁸ He then observed that:

Clause 2 is a replica of the provision in the Anti-terrorism, Crime and Security Bill that your Lordships rejected by a massive majority on two occasions. It is not a new provision, which we understood that the Government might wish to introduce in the light of extensive consultation.¹⁹

Although at the end of the debate, the Bill was committed to a Committee of the Whole House, there were a number of calls for further discussion of the Bill in a select committee.²⁰

3.1 **Select Committee on Religious Offences**

Lord Avebury proposed to the House of Lords’ Liaison Committee that his Bill should be committed to a select committee. On considering the matter the Liaison Committee recommended that a wider remit would be more appropriate:

This bill would create an offence of religious hatred, as proposed in a provision in the Anti-Terrorism, Crime and Security Bill which was deleted during its passage through the House. It would also abolish blasphemy and certain other religious offences. These are both matters which could benefit from examination by a select committee. A select committee set up to examine Lord Avebury’s Bill might be unduly constrained, so we recommend the appointment, as soon as clerk resources permit, of an ad hoc select committee on the subject of religious offences.²¹

On 15 May 2002, the House of Lords appointed a select committee “to consider and report on the law relating to religious offences”.²² The Committee received more than 500 written submissions, met 24 times and examined a wide range of witnesses.²³

- The Committee considered:

¹⁵ HC Deb 13 December 2001 c1112

¹⁶ HL Deb 8 January 2002, HL Bill 39 2001-02

¹⁷ HL Deb 30 January 2002 c315

¹⁸ *Ibid*, c320

¹⁹ *Ibid*, c321

²⁰ For example, see *Ibid* c340

²¹ Liaison Committee, *First Report*, 4 March 2002, HL 84, 2001-02, para 2

²² HL Deb 15 May 2002 c293

²³ Select Committee on Religious Offences in England and Wales, *Volume I – Report*, 10 June 2003, HI 95-I, para 5, <http://www.publications.parliament.uk/pa/ld/ldrelof.htm> (last viewed 9 June 2008)

- the law as it stands;
- the options for the blasphemy law;²⁴
- the *Ecclesiastical Courts Jurisdiction Act 1860*;
- incitement;
- freedom of expression;
- hate crime; and
- aggravation.

It drew the following conclusions:

133. The question nevertheless arises as to whether the protections afforded by law to religions and their adherents continue to have relevance in the 21st century and, if they do, how they might be adapted to meet the interests of all faiths (and those of no faith), rather than discriminate in favour of some. We believe there should be a degree of protection of faith, but there is no consensus among us on the precise form that it might take. We also agree that in any further legislation the protection should be equally available to all faiths, through both the civil and the criminal law.

134. That equality will be reinforced under civil law with the introduction in December 2003 of the Employment Equality (Religion or Belief) Regulations, which are drawn from European Council Directive 2000/78/EC. As this report demonstrates, the criminal law is less comprehensive. The law of blasphemy only provides protection for the Church of England, although members of other Christian Churches draw comfort from it. Race relations legislation has the effect of protecting Jews and Sikhs from incitement to religious hatred, but not Christians, Muslims (at 3%, the second largest faith community in the population) nor others, because they are not regarded as coming from a common ethnic origin. The rarely used Ecclesiastical Courts Jurisdiction Act 1860 can be invoked to provide protection for properly certified places of worship of all religions, but is archaic in its construction and carries minimal penalties that cannot be categorised as having deterrent value. Finally, section 39 of the Anti-Terrorism etc Act also provides for all religions, but provides a statutory aggravating factor in sentencing rather than an offence in itself.

135. The starting point for legislation may be the requirement on Government to enact legislation to implement the draft Council Framework Decision on Racism and Xenophobia, which would not be confined to incitement to hatred in the two areas so far selected: race and religion. It is impossible to forecast how this might be transplanted into UK law, but the occasion might be ripe to include incitement to hatred across the range of targets of hate crime, even beyond the list currently under debate in connection with the Decision, for example the gay community, asylum seekers or whoever incurs the opprobrium of some branches of public opinion.

136. Since this would take the form of primary legislation, the opportunity could be seized to take account of the other two matters which have preoccupied the Committee: that is, the two aspects whereby Parliamentary "statements" could be made about matters of faith itself as opposed to the protection of those who profess the faiths. What is to happen to the common law offences of blasphemy may not depend upon legislation but upon the contemporary climate, both social and legal,

²⁴ For more information see the Library Standard Note, SN/PC/4597, [The Abolition of the Blasphemy Offences](#)

which could lead to a decision to take no action at all. Whether places of worship, of all faiths, need a modern protection in criminal law is something which has become increasingly marginal. Other offences cover the majority of incidents which are seen to be offensive, but there remains a modest area still only covered by the Ecclesiastical Courts Jurisdiction Act 1860. Evidently this Act is not obsolete.

137. We support the protection of everyone's right to freedom of thought, conscience and religion, and the freedom to manifest one's religion or beliefs, under Article 9 of the European Convention on Human Rights, and we consider that the ordinary law gives that protection. We agree however that there is a gap in the law as it stands. We have examined whether there needs to be any additional protection either for believers as a class, or for the objects connected with their beliefs. There is no consensus as to whether such protections should exist and, if so, the precise forms they should take, but we do agree that the civil and criminal law should afford the same protection to people of all faiths, and of none.

138. These are matters of profound concern in the community, or communities. There exists a series of subjects on which Parliament alone can reach decision: the debate will be intense. What the proceedings of the Select Committee have made clear is that it is perfectly possible to conduct this debate, among witnesses and members of all persuasions, with equanimity and understanding. There is recognition that the differences need to be resolved, and there is much good will on which to draw in so doing.²⁵

In its response to the Committee, the Government made some specific comments on the arguments for and against an offence of incitement to religious hatred:

64. The chapter has given a very full and fair account of arguments for and against creating an offence of incitement to religious hatred. We are very much aware of the concerns of many people in this area, and in particular the Muslim community.

65. The Home Office accepts that the issue is not an easy one and will listen carefully to any further debate.

66. It is clear the Government must ensure that the criminal threshold of any proposed offence covers the harm which has been done without unduly interfering with freedom of speech.

67. We continue to favour an offence of incitement to religious hatred in order to address the sorts of situation described to the Committee in evidence, which seem to the Home Office to constitute a significant gap in the criminal law.

68. The Home Office made clear at the time of the Anti-Terrorism, Crime and Security Act 2001 that we were satisfied that the proposal was the proposed new incitement offence was compatible with the ECHR, including its provisions relating to freedom of expression. We have noted the Committee's helpful discussion of this issue and would review the proposal in the event of an opportunity for legislation, with a view to ensuring that the criminal threshold of any proposed offence covers the harm that is being done without unduly interfering with the rights of free expression enshrined in human rights legislation. We believe that it should be possible to distinguish in legislation between criticism of a religion or members of a religious group on the one hand, and on the other hand a criminal act of inciting hatred.

69. We note the Select Committee's discussion of whether the proposed role for the Attorney-General would either represent too high a threshold for prosecution or provide

²⁵ *Ibid*, paras 133-138

an insufficient safeguard against inappropriate prosecutions, and the suggestions given in evidence for alternative or additional safeguards. We would review the role proposed for the Attorney General before tabling new proposals if an opportunity for legislation arose.²⁶

The Committee's report and Government's response were debated on 22 April 2004. In her response to the debate, Baroness Scotland of Asthal, a Minister of State in the Home Office, confirmed that the Government intended to bring forward proposals for an offence of incitement to religious hatred that would balance the need to protect religious groups with the protection of freedom of speech:

In terms of balance between protecting religious groups and protecting freedom of expression, it is clearly essential to preserve this country's long and cherished tradition of freedom of speech. People must continue to be allowed to criticise beliefs and practices with which they disagree and do so robustly. However, we believe that it is possible to distinguish in legislation between criticism of a religion, or members of a religious group, and a criminal act of inciting hatred. I want to assure the noble Baroness, Lady Perry, that we believe that historians can be safe.

It would be necessary to ensure that the criminal threshold for any proposed offence covers the harm that is being done, without unduly interfering with the rights of free expression as enshrined in human rights legislation. We believe that this can be done. I emphasise that, as has been said by the noble Lord, Lord Avebury, the Government do not believe that it is necessary to define religion. What is important is that we deal with the hatred, because that is what is inherently offensive. That is what my noble friend Lord Rooker said when we were debating the Anti-terrorism, Crime and Security Bill in 2001. I do not hesitate to endorse that.

The evidence given to the Select Committee has shown that this is a matter of real concern for many communities, and the balance of opinion was in favour of the creation of the new offence. We heard that powerfully, I respectfully suggest, in the contributions from the noble Lord, Lord Bhatia, and my noble friend Lady Uddin.

There is a level of pain being experienced in many communities that we should recognise. We also note the joint statement by the representatives of important organisations in most of the faith communities in this country, urging the Government to legislate against incitement to religious hatred as soon as possible and asking Members of both Houses to support such a move. Such a statement carries weight and must be taken seriously, not least as confirmation that faith communities perceive there to be a problem that must be addressed.

We are very aware of the concerns of many people, in particular, as I said, the Muslim community. As members of a religious group, they are not offered the same protection against incitement to hatred as exists for mono-ethnic faith groups such as Jews and Sikhs. We also know that Christians do not have that coverage either. The noble Lords, Lord Joffe and Lord Bhatia, and my noble friend Lady Uddin spoke in particular about that gap. We went into the debate from a position of being in principle in favour of introducing a new offence of incitement to religious hatred. If recent statements and representations made to the Home Office are any indication, there would appear to be as much, if not more, support for such a measure in the wider community as existed when the report was published a year ago. We will study the arguments that we have heard in the debate, before formulating measures to address the issues that have been raised, although I cannot at this stage indicate when an opportunity to legislate on the

²⁶ Home Office, *Religious Offences – The Government Reply to the Report from the Religious Offences Committee Session 2002-03 HL 95*, December 2003, Cm 6091

matter might be found. Noble Lords will know the extent of the legislation that is to come to the House in this Session.²⁷

4 The Serious Organised Crime and Police Bill 2004-05

4.1 Background

On 7 July 2004, in a widely-trailed section of a speech on race equality and community cohesion, the Home Secretary, David Blunkett, revived plans to introduce an offence of incitement to religious hatred. He told the Institute of Public Policy Research:

Since 1997 the Government has introduced tougher penalties for racial and religious hate crime and the Crown Prosecution Service has reaffirmed its policy of prosecuting these crimes vigorously. In 2001 we tried unsuccessfully to introduce an offence of incitement to religious hatred. One of the main arguments against introducing this legislation was a concern that it would prevent people debating each other's religions. This just isn't the case and people's rights to debate matters of religion and proselytise would be protected, but we cannot allow people to use religious differences to create hate. If anything the arguments for this extension of the law have grown stronger since 2001. I hope to fill this gap in the legal protection for faith communities as soon as the legislative opportunity arises.²⁸

In a press release outlining the content of the speech, the Home Office announced:

David Blunkett said the Government intended to introduce an offence of incitement to religious hatred as soon as possible to help tackle extremists who used religion to stir up hatred in our society.²⁹

Fiona Mactaggart, the Parliamentary Under-Secretary of State at the Home Office, confirmed these plans in a written answer on 13 September 2004.³⁰

At the time of his speech in July, Mr Blunkett was also widely reported to have said that the measures applied "equally to far-right evangelical Christians as to extremists in the Islamic faith".³¹

4.2 Reaction to the announcement

In his speech, David Blunkett said that:

If anything the arguments for this extension of the law have grown stronger since 2001. I hope to fill this gap in the legal protection for faith communities as soon as the legislative opportunity arises.³²

The Guardian reported that the Liberal Democrats "said they would back the plan, adding that the loophole in the law had allowed inflammatory language to go unpunished".³³ But

²⁷ HL Deb 22 April 2004 cc475-476

²⁸ Home Office, *New challenges for race equality and community cohesion in the 21st century*, A speech by the Rt. Hon. David Blunkett MP, Home Secretary, to the Institute of Public Policy Research, 7 July 2004, p12

²⁹ Home Office Press Release 222/2004, *Sideline the extremists – Home Secretary*, 7 July 2004

³⁰ HC Deb 13 September 2004 c1407W

³¹ Philip Johnston, "Race Tories call on Blair to bar Muslim 'extremist'", *Daily Telegraph*, 8 July 2004; see also: Alan Travis, "New citizens face tougher English test: Blunkett sets minimum language level", *The Guardian*, 8 July 2004, and Richard Ford, "Incomers must learn English", *The Times*, 8 July 2004

³² Home Office, *New challenges for race equality and community cohesion in the 21st century*, A speech by the Rt. Hon. David Blunkett MP, Home Secretary, to the Institute of Public Policy Research, 7 July 2004, p12

³³ Alan Travis, *op cit*.

during the second reading debate, David Heath for the Liberal Democrats signalled a change of approach:

The most difficult issue addressed by the Bill is incitement to religious hatred. No one in the House wishes to allow or promote incitement to religious hatred and I do not doubt the intentions of the Home Secretary in introducing this legislation. It is unacceptable for people to promote hatred against any group of people defined on the basis of their religion, which is often a cipher for racial hatred. Let us be clear about that. However, that does not stop me having serious doubts about the form in which the Government have chosen to bring forward this legislation.³⁴

Trevor Phillips, the chairman of the Commission for Racial Equality, also supported the plan. *The Guardian* reported him saying that:

... it would prove a powerful signal that such treatment of a particular group was not tolerated in Britain.

He denied it would lead to bans on jokes or literature which criticised religion, saying it was about protecting "believers not the belief". He said it had to be realised that a third of British Muslims were not Asian and not protected by race relations acts.³⁵

The *Daily Telegraph* also quoted Trevor Phillips, who told it that current laws "prove inadequate protection to some religions from bigotry and hatred".³⁶

However, *The Guardian* reported that the Conservatives said such a law was "unworkable". It quoted the shadow home secretary, David Davis saying:

It will impinge on civil liberties and only serve to make lawyers rich. There are already laws that could be used more effectively.³⁷

Lord Desai, a Labour peer, wrote an opinion piece, in *The Independent*, opposing plans for the introduction of a law against the incitement to religious hatred. His article included the following questioning of the need for a new law:

... We have laws against inciting racial hatred, and indeed incitement to violence on any grounds. Why do we need to add religious hatred?

The argument has hinged mainly on the experience of Muslims, not just here but around the western world. They are attracting special and unwelcome attention from hatemongers. But in the UK, at least, it is moot to argue that the hatred is confined to people from the Middle East and South Asia.

It is not against their religion, but against their place of origin or their ethnicity. Black Muslims from the USA, Chinese, Indonesian or Malaysian Muslims do not attract perhaps the same attention. It is the weakness of the current law that few prosecutions succeed on racial hatred grounds. If this was strengthened, then we could get better protection. The answer, however, is not to proliferate the grounds on which prosecutions can be brought, but to tighten what exists.³⁸

³⁴ HC Deb 7 December 2004 c1173

³⁵ *Ibid*

³⁶ Philip Johnston, *op cit*

³⁷ Alan Travis, *op cit*

³⁸ Meghnad Desai, "We don't need new laws on religious hatred", *The Independent*, 8 July 2004

The Church of England Newspaper reported that “The Church of England welcomed the prospect of legislation against people found guilty of inciting violence under the auspices of faith”.³⁹

The *Methodist Recorder* reported the reaction of Rachel Lampard, the Methodist Church’s Parliamentary and Political Affairs secretary:

... new religious hatred legislation, if drawn up sensitively and carefully, could make a vital contribution to protecting people of faith from intolerance and hatred. ... “Some people have expressed concern that the new legislation may undermine freedom of expression”, she said, however, “freedom of expression has its limits, especially if others are harmed by it”.⁴⁰

However, Don Horrocks, an Evangelical Alliance spokesman expressed some concerns:

Despite the noble intentions of the Home Secretary, we continue to believe the new offence of incitement to religious hatred could actually end up being counter-productive in its stated aim of seeking to protect religious groups.

In particular, it is still difficult to see how legislation could be framed in a way which would not restrict freedom of speech, criminalize those who critique religion, leave the Attorney General and the courts to adjudicate on religious belief and introduce a culture of malicious and trivial litigation.⁴¹

The Muslim Council of Britain welcomed David Blunkett’s announcement. Iqbal Sacranie, Secretary-General of the Muslim Council of Britain made the following statement:

This is a long overdue measure but nevertheless is a welcome first step. It will hopefully close a loophole in the law that has meant that whereas incitement to racial hatred has been prohibited, incitement to religious hatred has not. This anomaly has not gone unnoticed by Far Right groups in the UK who have been abusing this loophole by publicly adapting their old racist rhetoric of yesteryear into a virulently anti-Muslim invective designed to create divisions in our society.

[...]

One of the most important freedoms for all of us must be the freedom from hate. There currently exists a hierarchy of rights. This is the first step towards a level playing field. The sooner the Government introduces comprehensive legislation prohibiting Religious Discrimination as it has done with Racial Discrimination the sooner a fairer deal for all UK citizens can be reached. However we await sight of the actual draft legislation to be able to offer more detailed comments.⁴²

However, Massoud Shadjareh, the chairman of the Islamic Human Rights Commission, said that “in the light of the well-recognised institutional Islamophobic society that we have at the moment, this legislation could very well be used against Muslim communities, rather than protecting them”.⁴³

³⁹ “Blunkett renews call for religious hate law”, *The Church of England Newspaper*, 8 July 2004, No 5725

⁴⁰ “Mixed reactions to religious hatred legislation”, *Methodist Recorder*, 15 July 2004, p2

⁴¹ *Ibid*

⁴² The Muslim Council of Britain Press Release, *Law to outlaw incitement to religious hatred welcomed*, 7 July 2004

⁴³ Philip Johnston, *op cit*

The Guardian also reported that the National Secular Society “claimed the move amounted to the reintroduction to the statute book of the medieval blasphemy laws”.⁴⁴

4.3 The Bill

The *Serious Organised Crime and Police Bill 2004-05* sought to extend the scope of Part III of the *Public Order Act 1986* (c64) to outlaw a number of activities which stirred up religious hatred.⁴⁵ Schedule 10 would have amended the 1986 Act to create new offences if the actions described in Part III which related to racial hatred intended or were likely to stir up religious hatred. It also would have amended section 23 so that possessing material with a view to it being used to stir up religious hatred became an offence. (The existing offences relating to racial hatred would not be affected by these proposals.)

The Schedule defined religious hatred as “hatred against a group of persons defined by reference to religious belief or lack of religious belief”. The *Explanatory Notes* outlined the rationale for this definition:

... The definition is designed to cover hatred against a wide range of religious beliefs but does not seek to define what amounts to a religion or a religious belief. It will be for the courts to determine whether a religion or belief falls within this definition.

302. The reference to "religious belief or lack of religious belief" is a broad one, and is in line with the freedom of religion guaranteed by Article 9 ECHR. It includes, though this list is not definitive, those religions widely recognised in this country such as Christianity, Islam, Hinduism, Judaism, Buddhism, Sikhism, Rastafarianism, Baha'ism, Zoroastrianism and Jainism. Equally, branches or sects within a religion can be considered as religions or religious beliefs in their own right. The offences also cover hatred directed against groups defined by reference to a lack of religious belief, such as Atheism and Humanism. The offences are designed to include hatred against a group where the hatred is not directed against the religious beliefs of the group or even to a lack of any religious belief but to the fact that the group do not share the particular religious beliefs of the perpetrator.⁴⁶

“Hatred” was not defined in either the Bill or the *Public Order Act 1986*. The *Explanatory Notes* observed that:

Hatred is a strong term. The offences will not encompass material that just stirs up ridicule or prejudice or causes offence. Further what must be stirred up is hatred of a group of persons defined by their religious beliefs and not hatred of the religion itself. Of themselves, criticism or expressions of antipathy or dislike of particular religions or their adherents will not be caught by the offence.⁴⁷

The term “incitement”, which the Home Secretary used in his announcement in July, does not appear in the Bill or in the *Public Order Act 1986*. However, the provisions of the *Public Order Act 1986* are described by *Halsbury’s Laws Direct* as “criminal offences of incitement to racial hatred”.⁴⁸ They only require that the defendant intends to stir up racial hatred or that racial hatred is likely to be stirred up:

None of the offences under the POA 1986, Pt III requires an intent to provoke a breach of the peace, or the likelihood of such a breach (let alone that public disorder resulted),

⁴⁴ Alan Travis, *op cit*

⁴⁵ *Serious Organised Crime and Police Bill 2004-05*, clause 119 and Schedule 10

⁴⁶ *Serious Organised Crime and Police Bill 2004-05*, Explanatory Notes, paras 302-303

⁴⁷ *Serious Organised Crime and Police Bill 2004-05*, Explanatory Notes, para 305

⁴⁸ *Halsbury’s Laws Direct*, “Discrimination”, para 460

nor that is be proved that racial hatred was actually stirred up. Instead, it is 'merely' required that the defendant should intend to stir up racial hatred by his conduct, or that such hatred is likely, having regard to all the circumstance, to be stirred up thereby (whether or not the defendant realised this would be likely).⁴⁹

4.4 Passage of the Bill

Commons consideration

On 7 December 2004, the day of the Bill's second reading, David Blunkett, then the Home Secretary, used a written ministerial statement to provide some detail of the extent of the new offence.⁵⁰ Among other things, he provided "two examples of situations where, taking into account all the circumstances, the prosecuting authorities would consider taking action under the new offence":

In response to an extreme racist organisation widely distributing material setting out a range of insulting and highly inflammatory reasons for hating Islam. Such reasons have included suggesting that Muslims are a threat to British people and liable to molest women and that they should be urgently driven out of Britain.

and

In response to extremists within a faith community making repeated threatening statements stirring up followers to look for ways to make trouble for unbelievers saying that God would never ever allow unbelievers to be pleased with them and created them to be enemies.⁵¹

The Standing Committee considered the provisions on incitement to religious hatred, on 20 January 2005. After a fairly lengthy debate, in which a number of amendments were debated, the Committee voted that the clause should stand part of the Bill, and that the related Schedule should not be amended.⁵²

Part 3 of the Public Order Act 1986 is currently entitled "Racial hatred". The Bill originally proposed that the Part should be retitled "Racial and religious hatred". On 1 February 2005, the Home Secretary, Charles Clarke, tabled an amendment to provide a new title: he proposed "Hatred against persons on racial or religious grounds".

During the Bill's report stage on 7 February 2005, an amendment to allow references to religion or religious belief to be taken into account in determining intent to incite racial hatred was negated on division (Ayes 191, Noes 291).⁵³ The Government amendment on the title of the provision was agreed to, without a division. In the course of the debate, Hazel Blears, a Minister of State at the Home Office, argued that the new title made it clearer that the provision "is about protecting people, not beliefs".⁵⁴

The Bill was given its third reading on the same day.⁵⁵

⁴⁹ Richard Card, *Card, Cross and Jones: Criminal Law*, 16th edition, 2004, p569

⁵⁰ HC Deb 7 December 2004 cc81WS-84WS

⁵¹ *Ibid*, c82WS

⁵² SC Deb (D) 20 January 2005 c433

⁵³ HC Deb 7 February 2005 c1224

⁵⁴ *Ibid*

⁵⁵ *Ibid*, cc1309-1318

Lords consideration

During the second reading debate on the *Serious Organised Crime and Police Bill* in the House of Lords, the Home Office Minister, Baroness Scotland of Asthal, acknowledged that the provisions on inciting hatred against persons on religious grounds were “undoubtedly the most hotly debated provisions in the Bill”.⁵⁶ The interest in the provisions on incitement to religious hatred was highlighted by Lord Dholakia, who calculated that of the 39 peers who spoke in the debate, “eight supported the Government’s provisions, 18 were against the provisions or expressed concern”; the remaining 13 speakers did not express an opinion.⁵⁷ Some of the peers who argued against these provisions also supported calls for the blasphemy laws to be abolished.⁵⁸ But in a written answer in February 2005, Baroness Scotland said that the Government had “no immediate plans to amend these laws but will keep the issue under review”.⁵⁹

During the Bill’s committee stage in the House of Lords, on 5 April 2005, the day on which the General Election was announced, the provisions on inciting religious hatred (a clause and related schedule) were removed from the Bill: the questions that the clause and schedule stand part of the Bill were negatived.⁶⁰ Earlier, at the beginning of the Committee stage, Baroness Scotland, the Home Office minister, outlined the Government’s decision to accept that it would have to lose the provisions in order to secure the Bill:

Baroness Scotland of Asthal: I hope that the Committee will forgive me for speaking somewhat out of turn, but I know that there has been a great deal of anxiety about two parts of the Bill. I thought that it would be useful to the Committee if I indicated the position of the Government now.

The first matter concerns the provisions relating to incitement of religious hatred. Members of the Committee will know that a great deal of time was spent on that issue at Second Reading and that the Government profoundly believe that an offence of incitement to religious hatred is necessary in order to provide equality of protection for our communities. The protection needed is from extremist activity and the type of activity that contributed to the disturbances in Bradford and Burnley in 2001. We believe that it is time that we reject such behaviour wholeheartedly and make a stand about the type of society in which we want to live. From the Second Reading debate, I know that that is a view strongly held by the Members of this House.

That said, we are in an unusual situation. The election has now been called. Other parties have made it clear that they oppose the provision as drafted. Given all the other important measures in the Bill, including those to help defeat organised crime and animal rights extremists, it would be wrong to lose the whole Bill for the sake of that one measure.

None the less, it is with considerable regret that I can advise the Committee that the Government will not oppose the Motions in the name of the noble Baroness, Lady O’Cathain; namely, that Clause 124 and Schedule 10 do not stand part of the Bill. However, the Government remain firmly of the view that there should be equality for those of all faiths, and of none, in law. We cannot see why it is right to retain protection

⁵⁶ HL Deb 14 March 2005 c1082. The blasphemy offences have since been abolished in the *Criminal Justice and Immigration Act 2008*; see Library Standard Note SN/PC/4598, [The Abolition of the Blasphemy Offences](#) for more information.

⁵⁷ *Ibid*, c1185

⁵⁸ *Ibid*, eg Lord Lester of Herne Hill [cc1113-1114]; Lord Plant of Highfield [cc1139-1140]; Baroness Whitaker [c1151]

⁵⁹ HL Deb 8 February 2005 c98WA

⁶⁰ HL Deb 5 April 2005 c684

in law for Jews and Sikhs, but wrong not to extend it to Hindus, Muslims, Christians, Buddhists and other faiths. It remains the firm and clear intention of this Government to give the people of all faiths the same protection against incitement to hatred on the basis of their religion.⁶¹

When the Lords amendments were considered in the Commons on 7 April 2005, Caroline Flint, the Home Office Minister, confirmed that the Government had accepted that it would have to accept the loss of the provisions in order to secure the Bill. But later in her speech she outlined the arguments that the Government had used to support the provisions.⁶²

Joint Committee on Human Rights

The Joint Committee on Human Rights, which considers matters relating to human rights and reports on all Bills, reviewed the provisions on incitement to religious hatred included in the *Serious Organised Crime and Police Bill*, in its Fourth Report. It commented that:

During the Second Reading debate, a number of speakers expressed concern that vigorous criticism of or disagreement with a set of religious beliefs or the practices of members of a religious group, or comedic representations of the group concerned, might lead to prosecution. If this were to occur, it would be very likely to violate the right to freedom of expression under ECHR [European Convention on Human Rights] Article 10 as being a disproportionate interference with the freedom. The question is whether it would actually be likely to have that effect.⁶³

But the Committee also noted that in 2001 it had considered that similar measures “were likely to be compatible with Convention Rights”.⁶⁴ Nevertheless, the Committee wrote to the Government to ask:

... why it considers that the provisions as currently drafted are likely to be regarded as a proportionate response to a pressing social need so as to justify the interference with ECHR Article 10.⁶⁵

The Joint Committee published the Government’s response in its Eighth Report:

2.57 In its reply, the Government said that, while it did not believe that incitement to religious hatred was commonplace—

it does exist and where it exists it has a disproportionate and corrosive effect on communities, creating barriers between different groups and encouraging mistrust and suspicion. At an individual level this can lead to fear and intimidation. It can also lead indirectly to discrimination, abuse, harassment and ultimately crimes of violence against members of our communities. It is legitimate for the criminal law to protect citizens from such behaviour.

2.58 After pointing out that the behaviour is not always covered by existing offences (for example, they do not cover religious groups which are not also groups defined by reference to ethnic origin such as Sikhs and Jews), the Government set out five grounds for its belief that the proposed measures would be proportionate to the pressing need to combat incitement to religious hatred, as follows

⁶¹ HL Deb 5 April 2005 cc595-596

⁶² HC Deb 7 April 2005 c1582; see also cc1590-1596

⁶³ Joint Committee on Human Rights, *Scrutiny: First Progress Report*, Fourth Report, 24 January 2005, HL 26/HC 224 2004-05, para 1.120

⁶⁴ *Ibid*, para 1.129

⁶⁵ *Ibid*, para 1.130

- The current offence of incitement to racial hatred, on which the proposed offence is based, is only rarely prosecuted, with only 44 convictions between 1986 and the end of 2004. It is accepted as a necessary measure to combat racism.
- There has been no new case law since 2001, when we concluded that similar measures to the ones proposed now were likely to be compatible with Convention rights, to suggest that the current proposals are less likely to be compatible now than they were then.
- In deciding whether to authorise prosecutions for the proposed offences, the Attorney General would have to act compatibly with Convention rights, and the courts would have to interpret 'hatred' in a way that respects Convention rights.
- In performing their functions, both the Attorney General and the courts would have to have regard to freedom of religion under Article 9 of the ECHR, and to Article 17 which prohibits abuse of rights. One's rights under Article 9 include a right to manifest one's religion without having hatred stirred up against one, and this includes a right to proselytise, an activity which in the Government's view can be conducted without stirring up hatred. The purpose of the proposed measures is to prevent such hatred being stirred up, and to that extent they seek to protect Article 9 rights.
- The effect of Article 17 of the ECHR is to deprive people of the right to freedom of expression under Article 10 so far as they use that freedom in a manner which is 'incompatible with the values proclaimed and guaranteed by the Convention, notably tolerance, social peace and non-discrimination', as the European Court of Human Rights held in its admissibility decision in *Norwood v. United Kingdom*. The Government considered that many cases arising under the proposed new measures would fall within the scope of Article 17.⁶⁶

The Committee accepted the Government's reasoning and concluded:

We accept the existence of a serious, albeit limited, problem of incitement to hatred on religious grounds. We consider that the measures proposed in the Bill are unlikely to give rise to any violation of the right to freedom of expression under Article 10 of the ECHR.⁶⁷

Constitution Committee

The Constitution Committee of the House of Lords, which was established in 2001 and has "both an investigative function in carrying out inquiries into wider constitutional issues and a scrutiny function in examining public bills for matters of constitutional significance", had also considered the *Serious Organised Crime and Police Bill*.

It described the provisions relating to incitement to religious hatred as "the most controversial provisions in Part 4, whether from a constitutional or human rights perspective".⁶⁸ It concluded that "these sensitive matters merit careful, unhurried and discrete deliberation by both Houses".⁶⁹

⁶⁶ Joint Committee on Human Rights, *Eighth Report*, 2 March 2005, HL 60/HC 388 2004-05, paras 2.57-2.58

⁶⁷ *Ibid*, para 2.59

⁶⁸ Constitution Committee, *Serious Organised Crime and Police Bill*, 3 March 2005, HL 65 2004-05, para 19

⁶⁹ *Ibid*, para 24