



**Briefing for
second reading in the House of Commons
on the provisions of the
Racial and Religious Hatred Bill**

June 2005

**For further information contact
Gay Moon, Head of the Equality Project
Email: gmoon@justice.org.uk Tel: 020 7762 6436**

1. JUSTICE is an independent all-party human rights and law reform organisation. It is the British section of the International Commission of Jurists.

Summary

2. JUSTICE is sympathetic to the Government's purpose in seeking to place incitement to religious hatred on the same footing as incitement to racial hatred. Accordingly, in the past, we have supported legislation along the same lines as the Racial and Religious Hatred Bill. However, we have become concerned at examples of intolerance in relation to what we would regard as the free expression of ideas – notably the rows by Christians over *Jerry Springer: the Opera* and Sikhs over *Behzti*. We fear that the consequences of legislation of this kind may not achieve the desired effect. Provisions which are intended to increase tolerance may, in fact, increase intolerance. Accordingly, at present, we are not persuaded that the provisions of the Bill meet the need. However, we will pay careful attention to the discussion as the Bill proceeds through Parliament.
3. If the Bill is to proceed, we consider that three specific amendments are required. We regard these as so important that we consider them to be absolutely essential for support. First, the offence of blasphemy must be abolished as it is outdated and discriminatory in protecting only the Christian religion. Second, leave of the Attorney General to bring a prosecution must explicitly be subject to considerations of the Human Rights Act. This would implicitly be the case, in any event, but we think the Bill would be better for making it obvious on the face of it that considerations of freedom of expression must always be considered. Third, the wording of the offence must be tightened so that it applies to incitement of hatred to people and not religion or belief as abstracts.

The problem

4. We accept that hatred of people on the grounds of religion or belief is unacceptable in a pluralistic society. Current provisions only cover incitement to race hatred. As race is defined so as to include Jews and Sikhs, but not Muslims, Hindus or Christians, the current law is unequal and creates a hierarchy of victims. This situation has been criticised by the House of Lords Religious Affairs Select Committee, in June 2003, as well as the UN Committee for the Elimination of all forms of Race Discrimination in August 2003 and more recently the European Commission against Racism and Intolerance and the Council of Europe Human Rights Commissioner Mr Gil-Robles.
5. There is, however, an important distinction between belief and believer. Whilst the believer should be protected from discrimination and hatred for holding religious beliefs, the beliefs themselves are not entitled to receive such protection.

Blasphemy

6. It is essential that law is not piecemeal. The law on blasphemy is vague, discriminatory and outdated and should be removed from the criminal cannon. This offence only applies to the Christian religion, and such inequality

cannot be justified. In 1985 the Law Commission proposed that it should be abolished and in 1989 the Home Office undertook that there would be no more state prosecutions for blasphemy. Its repeal should be part of this legislation. In addition, it is likely that the current provisions are contrary to the free speech, freedom of religion or belief and anti-discrimination provisions in the European Convention on Human Rights, Articles 9,10 and 14, because they protect only the Christian religion (or even just the Church of England) and not other religions.

7. There is no point in the Government retaining on the statute book a crime that it does not intend to use to prosecute offenders. However, we do see considerable dangers to retaining it in such circumstances as it leaves it open to be used by the general public, vested interest groups as well as vexatious litigants. A recent example of this was the attempt by the Christian Institute to bring a prosecution against *Jerry Springer: the Opera*. Hence, such an action can be used to threaten freedom of expression as such litigators do not have to operate within the same human rights framework which applies to the Court and the Government. The need to respond to such litigation, even if it is ultimately unsuccessful, could be a considerable curb on free expression.

Religious hatred

8. JUSTICE accepts there may be a protection gap in our penal law in that people targeted for hatred, abuse and vilification because of their religion do not have the same protection under the criminal law as those targeted because of their race. Non-discriminatory protection of all those with religious or other belief is an important aim in a pluralistic society that values diversity, and there is a good political case for strengthening such protection.
9. On the other hand, there clearly is a risk of suppression of legitimate artistic or political freedom of speech if members of a religious community seek to respond by criminal prosecution to public pronouncements that they regard as offensive.

Attorney General opinion

10. We support the retention of the Attorney General's fiat for any such prosecutions as a way of retaining a balance between the right of freedom of religion and belief and ensuring the continued protection of freedom of expression and legitimate democratic debate. We regard this as an essential key to the protection that this crime provides.
11. JUSTICE has recognised that concerns have been expressed about the effect that the proposed offence of incitement to religious hatred will have on freedom of expression. In order to counteract fears that freedom of expression will be affected, we propose the following amendments which will provide clear safeguards:

Proposed amendments to Public Order Act 1986, section 27 (shown in bold).

27(1) No proceedings for an offence under this Part may be instituted in England and Wales except by or with the consent of the Attorney General.

(1A) Before consenting to the institution of proceedings under this Part the Attorney General shall consider whether, having regard to all of the circumstances of the alleged offence, such proceedings are likely to be consistent with the European Convention of Human Rights, in particular the rights and freedoms guaranteed under Articles 9 and 10 of the Convention, and the prohibition of abuse of rights under Article 17 of the Convention.

(1B) In particular he shall consider whether the act or acts of the proposed Defendant gave rise to incitement to racial or religious hatred so as to be likely to imperil the safety of persons of a particular race, religion or belief as set out in sections 17 and 17A.

(1C) The Attorney General shall each year publish details of each and every request for a prosecution for racial or religious hatred showing the racial or religious groups involved, whether a decision was made to prosecute and the outcome of any such prosecution.

12. This amendment has been drawn so as to emphasise the importance of Articles 9, 10 and 17. It provides important emphasis in the same way as sections 12 and 13 do in the Human Rights Act 1998, and thereby providing the express comfort to those who do not understand the rigour of the existing controls.
13. A further clause (1C) has been added in relation to *imperilling* the safety of particular groups since it is clear that this will be the test that should determine whether a prosecution is a justified interference with the freedom of expression of the defendant. This is not intended to be part of the offence itself, it is only to provide criteria for the Attorney General himself when considering how to exercise his powers.
14. It is correct that the Attorney General's exercise of his powers can be subject to judicial review; however, the chances of the Court interfering with the Attorney General's exercise of his powers are remote¹.
15. An additional safeguard would be to require that information and statistics be published annually on prosecutions under Part 5. An annual breakdown of the statistics of prosecutions for incitement to religious or racial hatred by reference to the racial and religious group of both of the parties involved would correct any misinformation as to the application of these provisions and serve to re-assure those concerned about the inhibition of freedom of expression.

¹ Prior to the Human Rights Act 1998 it was not possible to judicially review the Attorney General's exercise of his discretion, see *Gouriet v Union of Post Office Workers* [1978] AC 435. Since the Human Rights Act judicial review has been possible, see *R v Attorney General ex parte Rockall*, case no CO/2375/99, High Court, July 2nd 1999, unreported. However, the Courts would be extremely reluctant to interfere with any appropriate exercise of his powers.

Offence

16. It is important to tighten the wording of the offence as set out in the Schedule to the Bill since there is ambiguity in the executive's intentions: as to whether it is the belief of the person that is being protected or the security of the person that is being protected on the grounds of religious belief.
17. JUSTICE therefore considers that any new legislation should make it clear that it is the hatred of persons identified by religion or belief that is to be protected and that this should be done at the same time as removing the outdated provisions in relation to blasphemy.