



The Association of
Muslim Lawyers (UK)

JACK'S 'STRAW' AMENDMENT: MORE WORDS THAT MEAN LITTLE

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After considerable pressure from religious and human rights organisations, the government claims that it has now amended the *Crime and Disorder Bill* to include religious discrimination. This was in response to the serious reservations conveyed about the failure of the Bill to include attacks motivated by religious hatred within its remit. However, the changes that have been made are of such little significance that they appear to have had no real impact on the effect of the Bill, other than to make its original intent more explicit. By looking at the application of the Act as it now stands, we will see that the government has missed an ideal opportunity to legislate on attacks motivated by religious hatred, at the same time as those motivated by racial hatred.

By amendment, the following words were added to the *Crime and Disorder Bill*:

"It is immaterial for the purposes of paragraph (a) or (b) of subsection (1) above whether or not the offenders hostility is also based, to any extent, on:

- (a) the fact or presumption that any person or group of persons belong to any religious group; or*
- (b) any other factor not mentioned in that paragraph".*

This amendment has made no change to the effect of the Bill and has left the law still in a ridiculous state. The Bill adopts the use of the term 'racial group', a term difficult to accurately define, but which the Bill states as 'a group of persons defined by reference to race, colour, nationality, or ethnic or national origins'. Hatred based on religion appears to be excluded – and yet, this is not the whole story. Case law, arising from consideration of the term 'racial group' under the *Race Relations Act*, has allowed this term to be extended to particular religious groups and not to others. Jews and Sikhs are covered by the term 'racial group' whilst Muslims and Hindus are not. This has serious repercussions in relation to the *Crime and Disorder Act* because it creates an anomalous situation whereby an attack upon a Jew or a Sikh, purely because they are a Jew or a Sikh, will result in a more serious charge being preferred and a higher sentence being imposed, than a similar attack upon a Muslim or a Hindu. This discrimination between religious groups leads to a feeling of dissatisfaction in communities that feel excluded and alienated by the law and appears to suggest that the law sees particular groups as more worthy of protection than others.

The changes that have been made to the Bill have not helped to eliminate the discriminatory anomalies and potential injustices created. They have served to include those attacked because of their race *as well as* their religion but not those victims who are attacked *purely* because of their religion. The burden of proof on the prosecution will still be to prove that the defendant attacked the victim either solely because of their race, or because of race and religion, and they must prove this beyond a reasonable doubt. Where the defence are able to argue that the defendant was acting out of pure religious hatred, the judge will not be able to apply the *Crime and Disorder Act* and impose a higher sentence. The message that the Act seems to send out is that racially motivated attacks are to be condemned more than religiously motivated attacks.

This, of course, begs the questions: Is it right that an attack motivated by purely religious hatred should be treated as less serious than a racially motivated attack, or a racially and religiously motivated attack? Is it fair to protect certain religious groups under the legislation and to exclude others? Surely the government cannot support such policies. In fact, this stance shows that the government has little understanding of discrimination

and its impact because the effect of the Act itself is discriminatory. It is necessary to examine the government's arguments against including religious and culturally motivated attacks in the *Crime and Disorder Act*.

The first reason put forward by the government was the fear of diluting the target of the legislation, which is racial crime, and extending the scope of the Bill too far, resulting in the weakening of the message. This explanation appears to have little merit. It gives the impression that racial and religious crime are a million miles apart and dealing with both together would lessen the impact of the message on race. Many in the community would beg to differ and would like to see a strong message from the government that says discrimination across the board will not be tolerated, whether it be based upon race or religion. Other countries have wide-ranging legislation to deal with all types of 'hate offences'. Here we are simply asking for the very similar crimes of racial and religious attacks to be dealt with together, especially when the opportunity to deal with a separate bill may not arise in the very near future. Both forms of discrimination deserve equally strong treatment. Whether one is attacked because of the colour of one's skin, or because one wears a turban, or a *hijab* (the headscarf), the government should condemn all discrimination and hate-crimes, and provide equality in the way these cases are dealt with by the legal agencies and in the penalties given on sentencing.

The second reason put forward by the government was the problem encountered with the issue of defining 'religious aggravation'. The point made was that the scope of the term 'religious group' was unclear. With the difficulty of defining a religious group, the legislation would be unclear as to whom it was seeking to include, particularly with reference to fringe groups claiming to be religions. This is an issue that clearly must be thought about, as it is intrinsic that legislation be clear for its application. Yet, is there such a great problem? By specifically including the mainstream religions in British society, the Act could cover those that are currently at risk but not being given adequate protection, whilst leaving it open for new religious groups in the future to be recognised by the courts through the common law. Surely the most important thing is to afford the necessary protection to those in the community who are clearly vulnerable and requiring legal protection at this very time.

A final point strongly emphasised by the government seems to be the needlessness of a clause to deal specifically with attacks motivated by religious hatred. Jack Straw, the Home Secretary, stated on the floor of the House of Commons: "If an offence is motivated partly by hostility to a racial group, that is enough to fulfil the requirements ... An attack is often motivated by a mixture of racial and religious reasons ... Purely religious motivation for the attack is unlikely". Arguments were also made in the debate that the inclusion of certain religious groups, that is Jews and Sikhs, within the scope of the term 'racial group' deemed such a separate clause unnecessary. There are several points that must be made here.

Firstly, although recognition of attacks based on religious as well as racial reasons is important, at the same time there seems to be a certain dismissiveness of the incidences of attacks motivated by purely religious hatred. Astonishingly, this seems to be the case despite the recent report on Islamophobia by the Runnymede Trust, in the launching of which the Home Secretary himself played a part!

Secondly, this gap in the Act affords defendants the possibility of an escape from an aggravated offence by arguing that the attack was completely religiously motivated, whether or not this was the case. With the burden of proof on the prosecution, any doubt in the minds of a jury will be sufficient to escape the more serious offence, where the victim is a Muslim or Hindu. There will be no remedy under statute or common law and we will have to rely on the simple basic offences, such as assault or criminal damage. The loophole created by the new Act is going to result in trials being protracted due to legal argument, where defendants seek to escape the aggravated offence. This will result in increased costs for the prosecution and the Legal Aid fund.

Thirdly, the protection of certain religious groups by the Act, with the exclusion of others is completely unhelpful. In the current situation, the law is neither fair nor clear. If attacks motivated by religious hatred are to be provided for by this Act, it should be in a clear manner that does not discriminate between different religious groups. Hoping that in the future other religious groups could be included in the definition of a racial group is completely unsatisfactory, particularly with a religion such as Islam that has such a racially diverse membership. Clearly, the absence of a clause dealing with religious and cultural attacks has left important gaps in the effectiveness of this Act, and its necessity is evident.

The reasons put forward by the government are, on the whole, unconvincing. Yet, how great a problem have we been left with in reality? The answer is a very significant one. Religious attacks are very real and happen every day. In parliamentary debate, concern was raised about areas such as Slough, Hounslow and Southall where gang violence between Sikhs and Muslims is a common occurrence. Noticeably, one MP stated: "On the streets of Slough, young Asians attack and maim each other; the excuse for that street gang violence is that one side is Sikh and the other side is Muslim". As the law stands, a Muslim will be charged with the aggravated

offence for attacking a Sikh, whilst the Sikh will be charged with a lesser offence for committing the same crime against a Muslim. As Muslims bear religious manifestations, such as the *hijab* and the beard, that allow them to be marked out as Muslims, this is clearly a matter of particular concern for the Muslim community. Ignorance of the increasing number of attacks on Muslims *because* they are Muslims seems to be an important element in the government's refusal to legislate.

We are now left in a situation where an attack motivated by purely religious hatred will be left to the existing law, and hence treated less seriously than a racial attack, that may or may not also have a religious element. The amendment has made no difference to those who are attacked purely because of their religious affiliation. The Act is actually a meal ticket for fat cat defence lawyers who will ingenuously use the gaps in the law to argue to their advantage that an attack was motivated by pure religious hatred and nothing else. The defendant will then escape the aggravated offence. Nobody would argue that this is acceptable, and we must therefore, question why the government has allowed this situation to be created. ▼

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