



The Association of  
Muslim Lawyers (UK)

## THE RACE RELATIONS ACT

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The Race Relations Act has proven to be a very important and significant piece of legislation. It states that it is unlawful to discriminate on the grounds of colour, race and nationality, and on the grounds of ethnic or national origins, in the fields of employment, education, housing, and the provision of goods, facilities and services. Enacted in 1976, the Act signified the Government's refusal to allow racial discrimination and prejudice to exist lawfully in Britain. Since then the Act has enabled thousands of people to challenge discrimination in all these areas and to obtain justice. The Act then has been much more than simply a symbolic statement as it has led to very real practical changes in British society.

However, the well-known difficulty with drafting legislation is that it is very difficult to imagine all the problems that might occur when the legislation is in practice and to pre-empt changes in society that may be relevant to the legislation. For this reason, the Commission for Racial Equality (CRE) was appointed to review the Race Relations Act and make recommendations for its alteration when it feels this is necessary. In its 1998 review the CRE has highlighted the weaknesses it has identified in the Act that have come to light in the 22 years in which the Act has been in practice.

The CRE have highlighted general areas in which it feels the Act should have affected but which it has failed to do. An overall finding has been that there are still far too many people who are aware that they have been racially discriminated against but are unable to secure justice. More specific criticisms have been directed at Parliament's ability to continue to pass legislation that is not in line with the Race Relations Act, so allowing for racial discrimination. Criticism has also been directed at the areas of government activity that are exempt from the provisions of the Act.

Yet one very large and significant hole in the legislation that the CRE has failed to focus on with enough attention is discrimination based upon religion. There is no specific legislation that outlaws discrimination based on religion and this is most unfortunate if one takes the view that what is not outlawed is then accepted as perfectly lawful. Yet, religious discrimination *has* been brought under the ambit of the Race Relations Act. As the Act defines discrimination on racial grounds as including grounds of ethnic origin, as well as colour or race, Jews and Sikhs have been able to find protection against discrimination in the Act. In *Mandla v Dowell Lee* in 1983, it was said that ethnic groups possess both a long shared history and a cultural tradition of their own, which they regard as characterising them as a distinct community.

Under such a definition, the common law has found Jews and Sikhs as comprising an ethnic group, but not Muslims or Hindus. So we are now in a position where the law itself is discriminating between different religious groups.

It is very disappointing that the CRE has not paid significant attention to this huge gap in the legislation which has been shown to be a major problem since the inception of the Race Relations Act. The argument in reply might be that religious discrimination is something quite separate from racial discrimination and so should not be discussed under the head of the Race Relations Act. Yet, the overlap of religious discrimination and racial discrimination that is in existence currently shows that the two issues do tend to interrelate and the current legal position is quite unacceptable. At the present time, Sikhs are able to gain protection against indirect discrimination due to the wearing of turbans. Yet a Muslim would not be able to gain protection against discrimination on the grounds of ethnic origins in the same way, for example due to wearing a hijab. Can such differential treatment have been intended when the aim of the Race Relations Act was to outlaw discrimination?

A further anomaly has developed in that the Race Relations Act has been found to protect Muslims against religious discrimination *if* a claim is based on discrimination due to their 'national' rather than their 'ethnic' origins. For example, a Pakistani woman was successful in her claim against her prospective employers who refused to employ her unless she wore a knee-length skirt. Yet she had to rely on, not the real reason for her objection, i.e. her Muslim faith, but on her Pakistani national origins. This is quite unacceptable to the Muslim community. This principle is contrary to the central idea of the world-wide Muslim community, the ummah, that does not see divisions according to national or racial lines. In practice it isolates all non-Asian Muslims from protection against discrimination and only applies it to Asian Muslims on a false basis. This is a very practical problem because Islam has such a diverse racial following.

The law is also unacceptable to anyone that believes that the law should be clear and honest in its aims. The inclusion of Sikhs and Jews into the legislation clearly shows the courts desire to protect as many groups as possible from discrimination and prejudice. Also, with the inclusion of some Muslims under the guise of protection against discrimination based on national origins we see the courts desire to extend the scope of the Act to religious discrimination. This, however has taken us to an unacceptable, anomalous situation where the law protects some religious groups and not others, and certain members of a particular religion and not others.

Having looked at the current position of religious groups under the Race Relations Act and the lack of alternative law against religious discrimination, it seems obvious that prompt action is required. So why has action by the government not occurred? The answer is not so obvious, but different arguments have been put forward.

It has been suggested that there is lack of sufficient evidence of religious discrimination in Britain. Yet this type of argument shows a certain type of ignorance. Firstly, there will obviously be the problem of getting admissions by the perpetrators. Secondly, more recent reports that have attempted to look into the extent of this problem, such as the report on Islamophobia by the Runnymede Trust, have shown that there is certainly a problem that needs to be addressed by the government. The government has taken a significant step in the right direction by initiating a research project into the nature and extent of religious discrimination, including the extent of any overlap with racial discrimination. This is expected to be completed in March 2000.

Other arguments made seem to be based on the difficulty of drafting an anti-discrimination law rather than the lack of need of one. It has been argued that particular situations make it entirely acceptable to discriminate on religious grounds. This need not be refuted in the exceptional circumstances where this is the case, such as ministers of religion or a specific teacher in a religious school, and these cases can surely be identified and incorporated into the legislation. Yet these exceptional cases can surely not be used to allow cases where pure prejudice and ignorance are the determining factors to continue to be lawful. Another difficulty, seen as making the legislation impossible, is the definition of 'religion', which it is argued can never be defined accurately enough. Yet, definitions are a problem for most legislation and it is usually a problem that can be well enough overcome to create satisfactory legislation and allow future queries to be answered by the courts. Such arguments against the discrimination law are simply not strong enough when the problem of religious discrimination is clearly so pressing.

The big question then seems to be how such a religious discrimination law should be enacted. There is an obvious possibility that there could simply be an amendment to the Race Relations Act, to include *religious* discrimination, as well as discrimination based on colour, race and ethnic or national origins. At a time when the gaps and weaknesses in the Race Relations Act are being reviewed by the CRE, it seems that religious discrimination could and should be addressed as an area in need of desperate attention by the law. The need for action is clear and a good opportunity to take such action has been made available through the current review of the Race Relations Act. The issue has not been seriously addressed by the CRE which can be seen as a failure on its part when religious discrimination has clearly become so bound up with the Race Relations Act and is currently in such an anomalous and nonsensical position at the moment.

Although, this would appear to be the speediest and simplest way to gain legal protection against religious discrimination, the arguments already mentioned against doing this might prevent this course of action. In this case, the need for action is still paramount and new legislation is clearly the answer. A Religious Discrimination Act would be greatly welcomed by the religious groups who are currently unprotected by the law and it would serve to make the law fair in its treatment of all religions and to treat members of the Muslim community the same regardless of their national or ethnic origins. Such legislation would surely also be of great value to society in general by being unequivocal in its attitude towards religious discrimination as well as racial discrimination, which can only mean a better integrated and more just society. ✓