



The Association of
Muslim Lawyers (UK)

RELIGIOUS DISCRIMINATION & THE HUMAN RIGHTS ACT 1998

Ahmad Thomson, Barrister, Deputy-Chairman, the Association of Muslim Lawyers

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Confucius is reputed to have said, 'Underneath the skin everyone is the same.' In many respects this is an accurate observation. We all share the same internal organs, our blood is red, we all experience love and hate and fear and hope. However degrees of awareness can be very different from person to person, as can attitudes and perceptions regarding the nature of existence and the way things are and what behaviour is acceptable or unacceptable – and it is clear to most intelligent people that there is not necessarily any direct correlation between these more subtle aspects of the human psyche and skin colour. In other words, although they both exist in many forms, ethnicity and religious belief are not necessarily inextricably or predictably linked.

It would appear that up to now those who are responsible for framing our laws have not given this matter sufficient thought. Although there has been some debate during recent months as to whether or not those who are attacked or discriminated against because of their religion, rather than because of their race, can expect any protection from the law by virtue of *inter alia* various provisions of the *Race Relations Act 1976*, the *Public Order Act 1986* and the *Crime and Disorder Act 1998*, it is in fact clear that at present they cannot. Although, for example, *Section 28* of the *1998 Act* makes it plain that perpetrators of racially aggravated offences cannot escape conviction by arguing that their hostility was directed at the victim's religion rather than race, this does not mean that a religiously motivated attack will automatically be treated as a racially motivated attack – as last year's High Court decision regarding Merton Council's attempt to secure legal protection for Muslims from certain members of the British National Party has demonstrated. It is clear that at present a religiously motivated attack is not regarded by the law as an aggravated offence. Furthermore, there is in fact no 'legal uncertainty' as to whether the law regards Muslims – who come in all colours and from all ethnic backgrounds – as a racial group. It does not and could not.

In this context it is therefore curious that whereas a black Falasha Jew from Ethiopia, a white Ashkenazim Jew from Russia and a brown Sephardic Jew from Lebanon are all treated as belonging to the same ethnic race for the purposes of English law – black, white and brown Muslims from exactly the same countries are not. Thus at present Jews are protected by the laws governing racial discrimination and incitement to racial hatred, whereas Muslims are not. Some might argue that this is the deliberate implementation of double standards, others simply that the law has developed unpredictably and is incomplete. Whatever the truth of the matter, the present state of the law in this area is unsatisfactory.

If a Muslim who belongs to a particular racial group was attacked by someone from another racial group, then it might be possible to prove that the attack was racially motivated rather than religiously motivated, but equally it might not, depending on the actual motive. If the attacker and the attacked belonged to the same racial group, it would be impossible. For example, if a white British Muslim was attacked by a white British thug who was irrationally prejudiced against Muslims, this would not and could not be regarded as a racially aggravated offence by the Crown Prosecution Service. If a British Punjabi Muslim was attacked by a British Punjabi Sikh, this would not be and could not be regarded as a racially aggravated offence by the CPS. If a British Punjabi Sikh was attacked by a British Punjabi Muslim, this could be regarded as a racially aggravated offence by the CPS, because at law the Sikhs are regarded as a race.

It is important to view the current contradictions which at present exist in the law *vis-a-vis* religion, and which have yet to be adequately considered by the legislature, within a larger historical context, since most of our country's laws are the products of the past and therefore inevitably tend to lag behind the present, however well formulated or intended.

Historically, English law has at various times tended to promote religious discrimination in one form or another rather than discourage it: At one point in history, the Jews were legally expelled from the realm. At other points, Christians have been legally victimised for being either Unitarian, Roman Catholic or Protestant. Even today, the sovereign is still barred by centuries old law from embracing Judaism, Roman Catholicism or Islam – or indeed any religion other than Protestantism. If the present heir to the throne embraced Islam, he would be barred from becoming king, even though he is entitled as an individual human being to exercise the freedom to choose and practice his own religion, either alone or in community with others, as guaranteed under *Article 9* of the *European Convention on Human Rights* which is soon to become part of the law of the land. Clearly, new laws are needed to deal effectively with such contradictions. The historical situations which gave rise to some of the old laws which are still current no longer exist or apply.

It is only relatively recently that some of the other major world religions have become established in the United Kingdom, and they have yet to receive the recognition, protection and status that the various branches of Judaism and Christianity already take for granted. One of the consequences of this situation, a curious mix of the old and the new, is that at present British justice does not extend to protecting people from religious discrimination or to providing any legal recourse to being granted compensation if direct loss is suffered as a result of such discrimination. If you are sacked simply because you are black, you have a remedy at law. If you are sacked simply because you are a Muslim, you have none – which is why it is the unstated policy of the Commission for Racial Equality not to proceed with cases in which the complainant has clearly been discriminated against for religious reasons rather than racial ones, since no law has been infringed.

Since, as its title clearly indicates, the *Race Relations Act 1976* was only formulated to deal with race discrimination, there is no point or chance of success in invoking the *1976 Act* to combat instances of religious discrimination, no matter how blatant or extreme or harmful such instances may have been. Thus although the CRE may not agree that religious discrimination should be permitted to manifest unchecked, it is at present driven by the logic of the law to condone it, because no tribunal or judge is able to rule that any act of religious discrimination has infringed any law, because there is no law which outlaws it or protects from it in the first place – which means that religious discrimination in its present forms has accordingly become institutionalised.

Up to now the main political parties in the land have remained united in maintaining this dubious *status quo*. Whenever the issue of *religious* discrimination has been raised, the home secretary of the day has been predictably swift to assert that the government is committed to eradicating *racial* discrimination! It is perhaps remotely arguable that an ostrich with its head buried in the sand might find such evasiveness reassuring. Hopefully it will be possible to adjust the regrettable and inequitable imbalances which exist in this area, and which are neither justifiable nor just, once the *Human Rights Act 1998* – which incorporates the *European Convention on Human Rights* into English domestic law – is in force. At that point the government of the day will be under a duty – by virtue of *Article 1* of the *ECHR* – to secure (by passing secondary legislation where necessary) the rights guaranteed by the *Convention*. If it fails to do so, the government will then itself be in breach of *Articles 1, 13 and 14* of the *Convention* and unless any such breach is remedied, will inevitably find itself before the Court of Human Rights in Strasbourg.

All that remains to be seen therefore, is at what point the government of the day will pass the required secondary legislation. Will it be well before yet another person who has suffered loss and injury to feelings as a result of religious discrimination has failed to secure justice in the courts of this land, or will it be not until some considerable time after all domestic remedies have been exhausted without success? *Fieret justitia at non fieret?* Will justice be done or not? *Fiat!* Let it be! √