

BRITISH HUMANIST ASSOCIATION

FINAL (THIRD) SUBMISSION TO THE SELECT COMMITTEE ON RELIGIOUS OFFENCES

LEGISLATION ON INCITEMENT OF RELIGIOUS HATRED

Objections to the present draft

1. In our original submission to the Committee (June 2002) we supported in principle a law against incitement to religious hatred. We said:

We accept that in an open and inclusive society the government has a duty to protect groups and individuals that are subject to hatred and violent attack. Incitement to violence is of course already illegal, but hatred stopping just short of violence is inimical to the values of a civilised society and the principles of reciprocal tolerance and cooperation, and can be devastating to the lives of individuals and communities. (*para. 4.2*)

We insisted, however, that the safeguards for legitimate freedom of speech needed to be adequate:

The BHA would oppose any legal constraints on vigorous debate, including satire, mockery and derision, about beliefs and doctrines, religious or otherwise. We see a clear distinction between this and incitement to religious hatred, i.e., hatred of individual persons on grounds of their religious or other beliefs. The distinction between beliefs and persons is fundamental. (*para. 4.1*)

2. When we gave oral evidence to your Committee on 18 July, we said that on further examination we had realised that the clauses as drafted originally by the Government and now included in Lord Avebury's Religious Offences Bill presented substantial risks to freedom of speech which were compounded by the draft guidance produced by the Attorney-General. These points are presented again in Annex 1.

3. The proposed law is of course exactly in line with the existing law on incitement to racial hatred in Part III of the Public Order Act 1986. This approach has undoubted advantages because

- (a) it builds on the existing jurisprudence under the law about racial hatred;
- (b) similarly, it builds on the popular understanding of the existing law;
- (c) it resolves the problem that Jews and Sikhs are already anomalously covered by the racial hatred law on the somewhat dubious basis of their being ethnic groups - something which is plainly a matter of understandable resentment by Muslims; and
- (d) the motives and acts of inciting racial and religious hatred will often overlap, and the use of the same law for both will prevent cases falling into a gap between two differently worded enactments.

Moreover, that the Law Commission in their final report on blasphemy¹ envisaged that an extension of the law on racial hatred would be the best method to deal with any recrudescence of acts fomenting religious hatred.

4. However, while it would be much tidier and more convenient simply to insert “or religious” into the various offences of inciting racial hatred, it is not a matter of necessity to apply the same legal regime to incitement of religious as to racial hatred, and tidiness should not be the first objective if its price is, as we suggest, too great.

5. The problem lies in the essential differences between race and religion which affect the degree to which freedom of expression can legitimately and proportionately be restricted. Restrictions are far more easily defended in the case of race (and to a large extent of gender, sexual orientation and other common grounds of unwarranted discrimination and prejudice), since race is in a sense without content: it has no ideology, teachings or dogma; organisations are rarely based on racial or ethnic groups and when they are they exercise little power in the world. What is at issue when people are characterised by or criticised for their race is their irrevocable identity as individuals or groups of persons.

6. The differences from religion are many and profound:

- Religions, unlike race, can be chosen or put aside.
- Religions make extensive and often mutually incompatible claims about the nature of life and the world - claims that can legitimately be appraised and argued over. There is no parallel for race.
- Religions, unlike race, set out to and usually do influence their followers’ attitudes and behaviour, often in ways which can be similarly controversial.
- Religions are in principle and often in practice in competition with each other: evangelists come to our front doors, set up television and radio stations and run crusades to make converts. This is plainly untrue of race.
- Religions are expressed through organisations that are often wealthy and powerful. They exercise that power in the name of their faith far outside the realm of religion - in influencing social attitudes and national and international policies (e.g. on contraception). This controversial influence has no parallel in race.
- Religious believers often feel under a duty to react strongly to any criticism or insult offered to their deities, prophets or beliefs, however mild or reasonable. This has little parallel in the case of race.

7. A straight addition of “or religious” after “racial” in the 1986 Act may be tempting and tidy but it clearly carries serious threats to freedom of speech about the controversial claims and influence of religion and religious believers and institutions.

8. The problem lies not in the need to combat incitement to religious hatred but in the proposal to apply the same formulation as in the existing law on incitement to racial hatred. This is based on the use of “threatening or abusive or insulting words or behaviour”, and whereas with race this offers few hostages to fortune and has in practice worked adequately

¹ Criminal Law Offences against Religion and Public Worship (Law Commission no. 145), HMSO, 1985, at paras. 2.29, 2.35, 2.42 and 2.53.

well, the same would be quite untrue if the formula were applied to religion in all its numerous manifestations from traditional faiths to fringe cults.

9. One criticism of the formula “threatening, abusive or insulting” was provided by the Law Commission in their final report on blasphemy, insofar as they rejected a blasphemy law based on what was “scurrilous” or “abusive” or “insulting” of Christianity on the grounds that it could:

only be judged *ex post facto* . . . Delimitation of a criminal offence by reference to jury application of one or more of several adjectives (all of which necessitate subjective interpretation and none of which is absolute) is hardly satisfactory.²

10. More importantly, however, and as suggested above, the formulation “threatening or abusive or insulting words” (we leave aside behaviour) can cover a huge range of speech that should never come near a *prima facie* case of breach of the law. Indeed, the Law Commission endorsed the use of abuse and insults:

Ridicule has for long been an acceptable means of focussing attention upon a particular aspect of religious practice or dogma which its opponents regard as offending against the wider interests of society, and in that context the use of abuse or insults may well be regarded as a legitimate means of expressing a point of view upon the matter at issue.³

Even if the law technically excludes such speech or offers defences in cases brought against it, it will still have a chilling effect on free speech owing to popular apprehensions or misunderstandings about the scope of the law.

11. We wish therefore to propose a fresh approach.

An alternative approach

12. With any legislation of this nature, it is necessary to ask what mischief it is intended to correct, to focus as narrowly as possible on that mischief and to be wary of unintended consequences such as frequently arise from inadequately considered clauses. The evidence given to your Committee has shown that:

- there is undoubtedly a mischief in need of correction, in the form of anti-Muslim propaganda emanating from a racist minority largely but not totally confined to white extremists;
- such hate campaigns are widely interpreted as racism displaced as a result of the success of laws about racial hatred and appear to be carefully directed so as to avoid infraction of these and other public order laws;
- by comparison with Islam, other religions appear to suffer little or no such abuse, while such as occurs is usually susceptible to action under existing laws;

² Op. cit., para. 2.18, quoting para. 6.1 of their 1981 working paper.

³ Op. cit., para. 2.35.

- there is in fact little specifically religious hatred to be found in this country at present (by contrast, say, with Tudor times);
- the complaints of most religious groups are not of incitement to hate their followers but of lack of respect, disdain or “vilification”.

13. The narrow (though intense) nature of the actual mischief re-emphasises the need for care that any law against incitement to hatred of persons on the basis of their religion or belief does not create greater mischief than it corrects. Any such law needs to satisfy the following conditions:

- it must offer a remedy for the present mischief;
- it must not offer privileges to any group, e.g., followers of a particular religion or religious believers as a class: it needs therefore to cover non-religious as well as religious beliefs and the absence of belief or of any specific belief;
- it must avoid interfering with the free expression of views and beliefs that fall short of inciting hatred of people on religious grounds. These will in the right context (see below) include mockery, satire, abuse and insult, denunciation of practices with damaging effects, and much that believers will class as vilification.

14. We suggest therefore that the law needs to recognise the fundamental importance of the *context* of any words or behaviour that are complained of.⁴ The same words may be harmless on the pages of a secularist journal but be objectionable in a leaflet distributed outside a place of worship. Mockery in a late night routine delivered to willing customers in a comedy club is different from the same mockery shouted from a soapbox to passers-by in a town suffering from religious tensions. Those who of their own volition attend a public meeting of animal rights activists campaigning against ritual slaughter have only themselves to blame if their religious beliefs are outraged by what they hear. This is very different from the inflammatory leafleting and street-corner agitation which we see as the proper target of a new restriction of freedom of speech.

15. The present draft fails to meet these requirements principally because it is based on the use of “threatening, abusive or insulting words or behaviour”. This formula, derived from long-standing public order legislation, is the source of much of its weakness, and it is unnecessary. It makes the means by which hatred may be incited fundamental rather than the actual incitement and presumes, subject to rebuttal, that abusive and insulting language will in fact incite hatred. We are advised that in most, if not all, other European jurisdictions the criminal law is used to prohibit incitement of both racial and religious hatred but that none uses this type of formula.

16. The Human Rights Act enables rights guaranteed under the European Convention on Human Rights (ECHR) to be enforced in UK courts, and the criminal law can serve as a suitable vehicle to regulate the freedoms guaranteed under the ECHR. It is therefore appropriate now to think again about how to formulate laws that make it a criminal offence to incite hatred on grounds of religion (and probably useful at some stage to rethink about incitement of racial hatred as well), thus protecting rights under Article 9, while not infringing rights to freedom of expression guaranteed under Article 10 other than as

⁴ The Bill, like the present Public Order Act, makes a move towards this by exempting acts done in private dwelling houses, a specific exclusion with which we agree.

implicitly provided for under Article 17 (which provides that nothing in the Convention may be interpreted as implying any right to engage in any activity aimed at the destruction of any rights and freedoms in the Convention, or at their limitation to a greater extent than the Convention provides).

17. We ventured in our oral evidence to the Committee an alternative formulation that focussed on:

the use of language or behaviour that in the judgement of a reasonable person was in all the circumstances likely to stir up hatred of a group of persons characterised by their religion or belief or to inhibit their exercise of their rights under the Human Rights Act, in particular those under Article 9 to freedom of religion or belief.

Unfortunately we have been unable to obtain any expert legal opinion on this draft other than that it might offer a complex list of tests for a jury.

18. We have however reviewed our original suggestion and now propose something on the following lines:

1. It is an offence for a person publicly to use words or behaviour or to display any material:-

a) by which he incites or intends to incite hatred against persons based on their membership (or presumed membership) of a religious group, or

b) in such manner and circumstances that a reasonable person would think that such hatred is likely to be stirred up.

2. For the purpose of section 1:

a) “religious group” means a group defined by reference to religion or belief or the absence of any, or any particular, religion or belief

b) “presumed” means presumed by the offender

c) “membership” in relation to a religious group includes association with members of that group.

19. In section 1, there are three factors: intention, likelihood, and achievement. Logically, each can appear alone, with either or with both the others, making seven possible combinations. Our draft covers all combinations except that where hatred results without either intention or likelihood, which would not seem culpable.

20. This structure could, we believe, be applied to the other activities in which incitement of religious hatred could occur, e.g., publishing or distributing written material, possession of written material, broadcasting etc., as specified in the current Public Order Act and the present Bill.

21. Its virtues in our eyes are:
- (a) that it places the emphasis on religious hatred (as intention or effect) rather than on the nature of any words etc used, since context and manner can so alter the import of words (consider Antony's speech in *Julius Caesar*);
 - (b) that it casts the law directly in terms of hatred of people and avoids the phrase "religious hatred" (with its inevitable but unintended implication of hatred of religion or religious doctrines or practices);
 - (c) that it uses the formula "religion or belief", the phrase that is found in the ECHR, in the EU directive on discrimination in employment (EU Council Directive 2000/78/EC) and hence in the draft Employment Equality (Religion or Belief) Regulations. We see this as a virtue because it comprehends both religious and non-religious lifestyles: Humanism, which is not a religious belief and is much more than the absence of one, has recently been recognised as a "religion or belief" in an English case – see Annex 2, where we record the interpretation of the phrase in some European cases.

22. As we said in our oral evidence, there should be a **defence of justification**, which would be particularly relevant in cases where there was no intent but there was likelihood, with or without achievement, of producing religious hatred. Lord Lucas in the Second Reading debate spoke of "a defence . . . on the grounds that the action taken by the accused was reasonable in all the circumstances". We are unable to suggest a draft but we see the need to safeguard legitimate criticism of the practices of a religious group - maybe of the barbaric punishments under Shari'ah law in some Muslim countries, or of the cover-up by the Jehovah's Witnesses of the involvement of many of their Elders in child abuse. Another example might be a denunciation of Roman Catholics on the basis of their opposition to the use of condoms by HIV-positive men, even in areas with a high incidence of HIV. Such speech might otherwise risk being investigated, charged, prosecuted and even penalised.

23. We believe that the Attorney-General's consent should be required for any prosecution, and we would in fact look favourably on a ban on private prosecutions. The Attorney-General should be required to produce an annual report to Parliament on the exercise of his discretion in such cases, the report extending to all cases referred to the Crown Prosecution Service by the police.

24. Drafting legislation is, however, a matter not for laymen but for skilled Parliamentary draftsmen. While we should like to have presented a finished draft to your Committee, it would still have required their expert scrutiny. In the event we have to confine ourselves to the suggestion of a line of approach along with our list of requirements.

Alternatives Approaches to the Problem

25. There remains the possibility that no draft can be devised to meet these requirements. We are left then with an undoubted but very specific mischief. Is it without remedy?

26. One inelegant thought is that, given that the present mischief is largely confined to the Muslim population, a short Bill might be brought in, compounding the anomaly over Sikhs and Jews, whereby Muslims would be defined, perhaps for the sole purpose of the relevant parts of the Public Order Act, as an ethnic group.

27. In more orthodox vein, we observe that in the absence of any specific law on incitement of religious hatred, existing law and the recent definition of a number of “religiously aggravated” offences goes a long way towards the intentions of Lord Avebury’s Bill. We note that Mr Peter Fahy, the deputy chief constable of Surrey, although he saw a need for a specific law on religious hatred, said in his evidence to the Committee that the new religiously aggravated offences had “to some extent . . . been overlooked by a lot of commentators, and indeed some police forces and prosecution authorities. To some extent, we are still catching up in terms of putting out guidance to police forces and individual police officers . . .”

28. We draw attention in particular to Annex 3, which compares section 18 of the Public Order Act as it would be amended by the Religious Offences Bill with the existing sections 4, 4A and 5 of the Act. (We note in passing that these provisions are themselves open to many of the objections we have raised against the Bill.) It seems to us that section 4A in particular could be used against racists who stir up hatred of Muslims but fade away before any violence is offered: it is based on threatening, abusive or insulting words and requires proof of intent to cause harassment, alarm or distress and of this being the effect, but it does not refer (like section 4) to *immediate* violence as the feared or likely outcome, and it does offer up to two years imprisonment, unlike section 5 which sets lower hurdles for conviction but results only in a fine.

29. We reject calls by some (mainly but not exclusively Muslim) witnesses for a law to deal with vilification of religion. This would in effect extend the blasphemy law, which we have already protested is overdue for abolition. Nor *a fortiori* should the law deal with disdain of religion or of believers, although we recognise the sincerity of those who complain of such treatment. The research conducted at the University of Derby for the Home Office⁵ demonstrates the extent of hurtful ignorance or misunderstanding and of discrimination against identifiable groups of religious believers. But the remedy for these ills lies in the extension into all spheres of anti-discrimination legislation such as the draft regulations about employment referred to above and in an advance towards an open society by the removal of the pro-Christian bias in our laws and institutions - e.g., the legal compulsion even on community schools to act as if they were Christian institutions. Progress is being made in these directions, albeit far too slowly.

4 December 2002

⁵ Weller, Feldman & Purdam: *Religious Discrimination in England and Wales*, Home Office Research Study 220, February 2001.

**DETAILED CONCERNS WITH THE RELIGIOUS OFFENCES BILL AND
THE DRAFT GUIDANCE FROM THE ATTORNEY GENERAL**

Concerns about the Bill

1. The Bill refers to “lack of religious belief” but does not recognise that Humanism is a lifstance that is not defined merely by its rejection of religion, so that humanists as such are unlikely to be protected by the Bill. There is much English case law based on a narrow definition of religion, and we are uneasy that the Bill and the guidance are not cast in terms of “**religion or belief**” (*see Annex 2*). We understand that the Home Office considered the use of this formula but rejected it for use in the criminal law. If it is finding its place in the civil law, we see no good reason why it should not be used in the criminal law.
2. The need is to **protect people, not beliefs**. Although the definition of “religious hatred” is in terms of hatred of groups of people, the term itself and the very name of the Bill do not suggest this and are liable to give rise to much misunderstanding. It sounds as if it is about incitement to hatred of religion or of religious beliefs and there is already much public misunderstanding to this effect. We are worried that this will lead to ill-founded but vexatious complaints and attempts to prosecute. It may also lead to widespread self-censorship by those who do not understand the difference. The law and the guidance should be cast explicitly in terms of inciting hatred of persons defined by their religion or belief, not in the shorthand of “inciting religious hatred” with a limiting definition elsewhere.
3. We believe the Attorney General should also **report annually** - maybe to the Joint Committee on Human Rights - on the operation of the Act and his exercise of his powers under it.
4. The formulation “**threatening or abusive or insulting words**” (leaving aside behaviour) would cover a wide range of legitimate speech and encourage complaints and (attempted) prosecutions from those religious groups that are both highly sensitive to disagreement with, let alone criticism of, their beliefs and militantly litigious in pursuing what they conceive of as their rights. Many of them command not just deep commitment by their adherents but considerable financial resources. If words are admittedly - professedly - abusive or insulting, the only defence left is lack of intent - a weak shield in the circumstances, leaving the defendant entirely at the mercy of the judge’s summing up and the jury’s interpretation of his motives.
5. The Bill exempts acts committed in a private house but it applies to acts (say) at a meeting for members of a secularist group, or at a public meeting to deplore the enticement of children to leave their families and join cults such as the Children of God. Such occasions are midway between being private and public: anyone who attends does so of their own volition, and if as a result of their religious beliefs they are outraged they have only themselves to blame. We would wish to see such **semi-private occasions** exempted from the law, although we have not found a formula which would achieve this without embracing also (say) BNP meetings that were purely anti-Muslim. This leaves us relying upon the suggested defence of justification.

6. The Bill provides for a defence that the defendant did not suspect that his words were threatening or abusive or insulting. But this is nugatory: he may well have intended them to be such, and such speech about religions is entirely legitimate. No defence is offered, however, that he **did not intend them to or believe them likely to incite hatred**. For example, a speaker may find he has an audience of a different character from what he expected - maybe an audience that has come with the specific intention of being incited. (See also the draft Guidance at para. 5.8 and annex 2). We believe our own draft is only slightly preferable, in that it imports consideration of the manner as well as the circumstances of the offending behaviour or speech, and wonder whether lack of intent combined with misapprehension of the circumstances should be allowed as at least a mitigating factor.

7. The Bill creates an offence of **possessing religiously inflammatory material** - or rather, that phrase would be used in the crossheading while the clause is actually about “possession of written material which is threatening, abusive or insulting” - with intent to stir up religious hatred or in circumstances where it is likely that religious hatred would be stirred up. Here again the difference between race and religion comes out in the most pointed way. Racist material has no legitimacy, but material critical of religion is legitimate. Such material - some historical, some modern - would routinely be in the possession of many members of the National Secular Society and the British Humanist Association. The question of whether an offence is committed again comes down to deemed intent – which is too uncertain to be the sole basis for criminal liability - or likely effect, a dangerous inhibition on free speech when many militant religious groups seem to seek grounds for offence and possibly even stage displays of exaggerated reaction.

8. Another example is provided by Salman Rushdie’s *Satanic Verses*. Some would argue that it was insulting just because enough people were, in fact, insulted by it. And religious hatred was certainly stirred up, and likely to have been stirred up, since some believers in Islam (as in other religions) require almost nothing to trigger hatred.⁶ True, the hatred was directed principally against Rushdie, but it also predictably stirred up a hate-filled backlash. Yet so far as we can see an action could lie under the Bill against material in itself quite dispassionate but sufficiently critical to have the unfortunate result of inflaming the mob.

9. As in the last example, the innocent expression of views by a person or persons may render them the objects of religious hatred by another group with strongly held contrary views. Given what some see as the perverse use of the law on incitement to racial hatred against some racial minorities, it is not wholly incredible in such circumstances to imagine that the innocent parties might be accused of **inciting hatred against themselves**.

Concerns about the Guidance

10. The guidance should be **statutory** - otherwise it is meaningless.

11. The guidance is cast entirely - from its title to the important clarification in 5.12 - in terms of the **expression of religious beliefs** and its purpose is even stated as to counter concerns that those making “legitimate expression of religious beliefs could find themselves liable to investigation and prosecution”. The guidance does not mention expression of the rejection of religious beliefs.

⁶ Witness, for example, the communal riots and deaths resulting from the attempt to stage the Miss World pageant in Nigeria.

12. The guidance refers throughout to the expression of **legitimate** religious beliefs. The idea of the legitimacy of a belief is not in the Bill, but the Attorney General seems to envisage that some beliefs may be illegitimate. We are concerned at this and worried that rejection of religion may be a front runner as an illegitimate belief in the eyes of some people - maybe including some future Attorney General.

12. The Guidance says (para. 3.1) that the police may “**arrest and even . . . charge**” before consulting the Attorney General. We are opposed to the police having such powers. Arrest without consultation should only be necessary in extreme cases of incitement to violence where the Public Order laws will apply and charges should in every case await the Attorney General’s ruling.

13. The Guidance says (para. 3.3) that “it is open to the police to **take advice from the CPS** [Crown Prosecution Service] before or during an investigation”. We think the “expectation” that this would happen is not enough: it should be required.

14. The Guidance says (para. 4.1) that if there is sufficient evidence to mount a prosecution, the Attorney General will then consider if one is “needed in the public interest”. Any guidance should refer here to the **importance of Article 10** of the ECHR, as in sections 12(4) and 13(1) of the HRA. Guidance published at the end of November⁷ said that it will “almost always” be considered in the public interest to prosecute alleged homophobic offences: that is welcome, but the policy could, we fear, easily be applied to alleged religious offences as another variety of hate crime where it would have dangerous implications.

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⁷ *The Guardian*, 28 November 2002

RELIGION OR BELIEF

Article 9 of the European Convention on Human Rights reads in part:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his **religion or belief** and freedom, either alone or in community with others and in public or private, to manifest his **religion or belief**, in worship, teaching, practice and observance.

As a result, European law is moving in the direction of recognising a category of “religion or belief”, treated as a *single* concept. Case law (see below) has shown beyond doubt that Article 9 embraces not only religious beliefs but also non-religious beliefs such as Humanism and atheism. Indeed, the first such case⁸ in the UK has recently been reported.

The same phrase is used in Article 18 of the International Covenant on Civil and Political Rights:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a **religion or belief** of his choice, and freedom, either individually or in community with others and in public or private, to manifest his **religion or belief** in worship, observance, practice or teaching.

This was glossed by the Human Rights Committee:

Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.⁹

The phrase has also been adopted in the EU directive on religious and other discrimination in employment:

The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of **religion or belief**, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.

European cases

(a) “As enshrined in Article 9, freedom of thought conscience and religion is one of the foundations of a ‘democratic society’ within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, *but it is also a precious asset for atheists, sceptics and*

⁸ *re* Crawley Green Road Cemetery, Luton - St Alban’s Consistory Court: Dec. 2000

⁹ General Comment no 22(48) (Art. 18) adopted on July 20th 1993, CCPR/C/21/Rev.1/Add.4, 27 September 1993, p1.

the unconcerned.” - *Kokkinakis v Greece*: (1994) 17 EHRR 397, para 31

(b) “The right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate.” - *Manoussakis v Greece*: (1996), EHRR 387, para 47.

(c) Belief means “more than just ‘mere opinions or deeply held feelings’; there must be a holding of spiritual or philosophical convictions which have an identifiable formal content.” - *McFeekly v UK*: (1981), 3 EHRR 161.

(d) “The term “beliefs”...denotes a certain level of cogency seriousness cohesion and importance” - *Campbell and Cosans v. UK*: (1982), 4 EHRR 293 para 36 - related to Article 2 (right to education).

(e) Humanism is a “religion or belief” - *re Crawley Green Road Cemetery, Luton (St Alban's Consistory Court: Bursell Ch, December 2000)* [2001] 2 WLR 1175.

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Effect of Religious Offences Bill*Acts intended or likely to stir up racial or religious hatred***18 Use of words or behaviour or display of written material**

(1) A person who uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting, is guilty of an offence if

- (a) he intends thereby to stir up **racial or religious hatred**, or
- (b) having regard to all the circumstances **racial or religious hatred** is likely to be stirred up thereby.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the written material is displayed, by a person inside a dwelling and are not heard or seen except by other persons in that or another dwelling.

Public Order Act sns 4, 4A, 5

(all potentially religiously aggravated)

Sn 4, 5: A person is guilty of an offence if he –

Sn 4A: A person is guilty of an offence if, with intent to cause a person harassment, alarm or distress, he-

Sn 4: a) uses towards another person threatening, abusive or insulting words or behaviour, or

Sns 4A, 5: a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or

Sn 4: b) distributes or displays to another person any writing, sign or other visible representation which is threatening, abusive or insulting . . .

Sns 4A, 5: (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting,

Sn 4: with intent

to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or

to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be provoked.

Sn 4A: thereby causing that or another person harassment, alarm or distress.

Sn 5: within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

Sn 4: An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is distributed or displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

Sn 4A: An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the person who is harassed, alarmed or distressed is also inside that or another dwelling.

Sn 5: An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

(3) A constable may arrest without warrant anyone he reasonably suspects is committing an offence under this section.

[Similar provision in respect of all three sections.]

(4) In proceedings for an offence under this section it is a defence for the accused to prove that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the written material displayed, would be heard or seen by a person outside that or any other dwelling.

Sn 4A: *Defence if had no reason to believe could be seen or heard outside dwelling(s).*

Sn 5: *Defence if (a) . . . had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress; (b) had no reason to believe could be seen or heard outside dwelling(s).*

(5) A person who is not shown to have intended to stir up **racial or religious hatred** is not guilty of an offence under this section if he did not intend his words or behaviour, or the written material, to be, and was not aware that it might be, threatening, abusive or insulting . . .

Sn 4: *[No need to prove intent if the other person “is likely to believe that such violence will be provoked” - see above]*

Sn 4A: *[Need to prove effect but not intent. - see above]*

Sn 5: *[Need to prove likely, not actual, effect, & not intent. - see above]*

Sns 4A, 5: *[Defence of reasonable conduct]*

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