



THE ASSOCIATION OF MUSLIM LAWYERS

Submissions to the House of Lords Select Committee on Religious Offences

May it please your lordships, the following submissions are made on behalf of the Association of Muslim Lawyers (UK), and on behalf of all the Muslim communities in the UK, and on behalf of all the sincere followers of all the *bona fide* religions in the UK:

Scope of the Enquiry :

1. The Select Committee is invited to consider submissions and make recommendations within the general context of the laws (and at present mainly the absence of laws) which are concerned with *religious* discrimination generally.
2. Bearing this in mind, the Select Committee is requested to consider all of the AML *Recommendations for the Forthcoming Religious Discrimination Legislation* dated the 14th July 2002, copies of which have already been made available to the Select Committee.
3. The Select Committee should only consider *religious* offences in the context of *bona fide* religions which are based partly or wholly on a revelation from God and whose principal purpose is the worship of God.
4. Protection under any laws governing *religious* offences should not be extended to those whose beliefs and practices do not involve adherence to a *bona fide* religion and the worship of God.
5. Freedom of belief in general, including the *non-religious* freedom not to believe in or worship God and not to follow any *bona fide* religion should be protected by separate legislation if this is deemed necessary – although in fact these *non-religious* freedoms are already established as a social norm and recognised by *Article 9* of the *European Convention on Human Rights* (the *ECHR*).
6. *Article 9* of the *ECHR* which has been incorporated in the *Human Rights Act 1998* (the *HRA*) recognises *inter alia* the freedom of *religious* belief and the freedom to put that *religious* belief into practice, whether alone or in a group, subject to reasonable limitations.
7. Every freedom is subject to reasonable limitations, including the freedom of speech.
8. In contravention of the *ECHR*, *Article 9* *religious* rights have not yet been secured by English domestic law in the sense of providing appropriate remedies if these rights are unreasonably violated.
9. Since the *bona fide* religious communities in the UK are minority communities, they are more vulnerable and therefore more in need of the protection of the law than non-religious majority communities.

10. If laws governing religious offences and religious discrimination are developed in an unco-ordinated, haphazard manner – then this is what they will be, dysfunctional.
11. The specific offences which the Select Committee is considering should therefore be viewed as part of an overall strategy to protect *Article 9 religious* rights from being violated – under both civil and criminal law – and to provide appropriate remedies if and when they are violated without reasonable justification.
12. In so doing, the Select Committee’s attention should be focused on where the line should be reasonably drawn between valid freedom of expression on the one hand – and on the other hand, unacceptable vilification. Since possible fact situations are limitless and since knowing where to draw the line is a delicate matter, this should be ultimately a matter for the exercise of judicial discretion.
13. There are different degrees of vilification, the lower end of which cannot be regulated by either civil or criminal law. Vilification should rightly be regulated by civil law when it causes real harm and hardship – and by criminal law when it becomes really serious.
14. The specific offences which the Select Committee is considering fall within the domain of criminal law and are concerned principally with deterring the vilification of those whose beliefs and practices involve adherence to a *bona fide* religion and the worship of God – and of the religion itself.
15. As regards deterrence of vilification by criminal law (which includes the imposition of penalties on those who commit an offence) the least serious offence is blasphemy, followed by incitement to religious hatred, followed by incitement to the commission of religiously aggravated offences, followed by the actual commission of religiously aggravated offences.

Blasphemy :

16. The law of blasphemy should not be abolished. Although in a minority comprised of different minorities, sincere and God-fearing followers of *bona fide* religions – who are certain of the life after death and who yearn for the Garden and fear the Fire – are correspondingly careful in their behaviour and accordingly have a morally stabilising effect on society as a whole. Since they are law-abiding minorities, they therefore deserve the protection of the law.
17. The protection at present afforded by the law of blasphemy exclusively to Protestant Christians and Protestant Christianity should be updated, redefined and extended so as to afford equal protection to all other *bona fide* religions and their followers, including Islam and Muslims.
18. The new statutory definition of blasphemy should be :
 - 1 (1) The crime of *blasphemy* is committed by a person who intentionally makes public words, images or conduct whereby the beliefs, doctrines, practices and rituals of any *bona fide* religion are unreasonably vilified by abusive or violent words or conduct which shock and outrage or are likely to shock and outrage the feelings of the general body of believers who follow any such religion.

- (2) For the purposes of section 1(1) above :
- (i) A *bona fide* religion is any religion based partly or wholly on a revelation from God and whose principal purpose is the worship of God;
 - (ii) God is the Creator, the Sustainer and the Destroyer of all that exists;
 - (iii) It is for the court to decide, taking all the circumstances and evidence into account, as to what constitutes:
 - (a) a *bona fide* religion, and
 - (b) unreasonable vilification in any particular case.
19. This definition would help protect the sincere followers of *bona fide* religions from malicious attacks which fall short of incitement to religious hatred and incitement to the commission of religiously aggravated offences, whilst still upholding the freedom of speech by permitting sincere theological debate, reasoned scholarly criticism and light-hearted humour. It would act more as a deterrent than as a means of securing convictions.
20. This definition would also not afford any protection to those religious extremists who in seeking to champion their own religion are unreasonably excessive in their assessment of other religions and in their behaviour towards the followers of other religions.
21. The purpose of making blasphemy a criminal offence is not only to ensure respect and honour where respect and honour are due, but also to act as a deterrent against the commission of related and more serious offences, namely incitement to religious hatred and incitement to the commission of religiously aggravated offences.

Incitement to religious hatred :

22. Incitement to religious hatred involves a higher degree of vilification than that which constitutes blasphemy. When blasphemy ceases to manifest in isolated instances and is established as a socially acceptable, legally permitted, officially condoned norm, then at this point it becomes the precursor of incitement to religious hatred and incitement to the commission of religiously aggravated offences.
23. Incitement to religious hatred constitutes an attempt to mobilise public opinion against both the followers of a *bona fide* religion and the religion itself so that they are lead to fear for their own personal safety and for their property.
24. Incitement to religious hatred is a degree of vilification which if left unchecked is likely to motivate people to inflict physical harm on the people who are the object of that vilification as well as physical damage to their property.
25. An obvious example of the kind of mischief which legislation should criminalise is the BNP leaflet, cassette and CD campaign in the summer of 2001 which precipitated attacks against Muslims especially in the north of England and which led to disturbances – for which Muslims were then held largely to blame, even when acting in self-defence after their calls for protection had been ignored by some police.
26. Unfortunately the present Home Secretary either could not or would not or did not either see or understand this.

27. Other recent examples of the kind of mischief which legislation should criminalise include the vilification and incitement to religious hatred and incitement to the commission of religiously aggravated offences which both preceded and accompanied the ‘Christian’ Nazi rape and massacre of European Jews, the ‘Christian’ Serbian rape and massacre of Bosnian and Kosovan Muslims, the ‘Christian’ Russian rape and massacre of Chechenian Muslims, the ‘Hindu’ Indian rape and massacre of Gujarati and Kashmiri Muslims and the ‘Jewish’ Israeli massacres of Palestinian Christians and Muslims.
28. This degree of vilification and incitement to religious hatred and incitement to the commission of religiously aggravated offences should be outlawed just as much as the destruction of human life and property to which it invariably and inevitably leads if left to freely fester unchecked and legally permitted to flourish. Understandably, British Muslims do not want to experience a similar escalation of vilification and incitement to religious hatred and their consequences re-enacted in the UK.
29. Thus incitement to religious hatred constitutes words or behaviour which are likely to lead sooner or later to the commission of religiously aggravated offences if not legally deterred.
30. The new statutory definition of incitement to religious hatred should be :
- 1 (1) The crime of *incitement to religious hatred* is committed by a person who intentionally makes public words, images or conduct whereby the beliefs, doctrines, practices and rituals of any *bona fide* religion are unreasonably vilified by abusive or violent words or conduct which lead or are likely to lead the general body of believers who follow any such religion to fear for the well-being of their lives and their property.
 - (2) For the purposes of section 1(1) above :
 - (i) A *bona fide* religion is any religion based partly or wholly on a revelation from God and whose principal purpose is the worship of God;
 - (ii) God is the Creator, the Sustainer and the Destroyer of all that exists;
 - (iii) It is for the court to decide, taking all the circumstances and evidence into account, as to what constitutes:
 - (a) a *bona fide* religion, and
 - (b) unreasonable vilification in any particular case.
31. The definitions in *paragraphs 18 and 30* should be combined as follows :
- 1 (1) The crime of *blasphemy* is committed by a person who intentionally makes public words, images or conduct whereby the beliefs, doctrines, practices and rituals of any *bona fide* religion are unreasonably vilified by abusive or violent words or conduct which shock and outrage or are likely to shock and outrage the feelings of the general body of believers who follow any such religion.
 - (2) The crime of *incitement to religious hatred* is committed by a person who intentionally makes public words, images or conduct whereby the beliefs, doctrines, practices and rituals of any *bona fide* religion are unreasonably vilified by abusive or violent words or conduct which lead or are likely to lead the general body of believers who follow any such religion to fear for the well-being of their lives and their property.

- (3) For the purposes of section 1(1) and (2) above :
- (i) A *bona fide* religion is any religion based partly or wholly on a revelation from God and whose principal purpose is the worship of God;
 - (ii) God is the Creator, the Sustainer and the Destroyer of all that exists;
 - (iii) It is for the court to decide, taking all the circumstances and evidence into account, as to what constitutes:
 - (a) a *bona fide* religion, and
 - (b) unreasonable vilification
 in any particular case.

32. The purpose of making incitement to religious hatred an offence is for this to act as a deterrent against the commission of something worse, namely incitement to the commission of religiously aggravated offences, followed by the actual commission of religiously aggravated offences.

Enforcement :

33. Generally speaking, experience regarding the effectiveness of the Race Relations and Sex Discrimination legislation, especially in the sphere of employment, has shown that it is sometimes difficult to actually prove that *racial* or *sexual* discrimination has occurred, especially when discrimination is subtle and sometimes even unintentional, and often when it is indirect rather than direct.
34. Up to now it has been even more difficult to prove that *religious* discrimination has occurred since the law provides no protection against this and it is therefore necessary to 'prove' that religious discrimination is racial or sex discrimination – even when this is not actually the case – in order to secure a legal remedy for a party whose feelings have been injured and who may also have suffered financial loss as a result of religious discrimination.
35. These problems are unlikely to be as common in the context of the offences of blasphemy and incitement to religious hatred – since they do at least recognise that religious discrimination can occur. Furthermore, abusive and violent vilification is usually not only intentional but also malicious – and since it is usually expressed in no uncertain terms, it is not only direct and explicit but also clearly self-evident. It is gross not subtle – and therefore easy to identify, especially by its recipients.
36. As already pointed out, the difficulty lies in drawing the line between upholding the rightful exercise of the precious freedom of speech – which should be protected, and the wrongful exercise of unacceptable vilification – which should be prevented. This is the crux of the matter. When can words, images or behaviour be regarded as 'fair comment' – and when do they become so irresponsible and excessive that the harm they do outweighs the excellence of being able to speak freely, so that the law must intervene in order to restore and ensure a just balance. As already stated in *paragraph 7*, every freedom is subject to reasonable limitations, including the freedom of speech.
37. There is also the same likelihood as with criminal offences in general, especially as regards incitement to religious hatred, that victims and witnesses may be reluctant to give evidence because they fear that they may be victimised – both in the legal as well as in the lay meaning of the word – as a result of their giving such evidence.

38. It is hoped however that the success of the introduction of these new offences will be measured more by the general deterrent effect they have – which should be large, rather than by the number of prosecutions and convictions – which should be few.

Places of Worship :

39. The problem with the *Section 2* of the *Ecclesiastical Courts Jurisdiction Act 1860* kind of offence is that sometimes both perpetrators and victims are initially arrested and charged, whilst the instigators remain discreetly in the background, untouched – as is the case at present as regards those who are still legally free to incite people to religious hatred and to the commission of religiously aggravated offences, with impunity.
40. In the context of the Muslim community it sometimes happens that ‘the mafia element’ attempt to take over a mosque or Islamic centre by force from the people who originally established it. Sometimes the trustees who repulse such a takeover bid end up being falsely accused and even convicted of having started and being involved in the trouble for which ‘the mafia element’ are actually responsible.
41. Another way of dealing with this problem, by means of the civil law, is to advise trustees to have a clause in their trust deed which entitles them to exclude from the premises any person who breaches or threatens to breach the peace either in or near the mosque or Islamic centre. This strategy makes it easier to obtain an injunction in the County or High Courts if matters become serious.
42. *Section 2* of the *Ecclesiastical Courts Jurisdiction Act 1860* will only be of use if the people who are really responsible for any ‘riotous, violent or indecent behaviour’ are charged. Furthermore, not all places of worship are actually registered as places of worship – in which case *section 2* would not be applicable. As with most current laws which still govern religion, this law is a product of a historical situation which once justified the introduction of such laws but which no longer exists. There is therefore no real need to preserve this particular offence.
43. There is a pressing need to introduce new laws to deal with the current situation.
44. The social texture of society in the United Kingdom has undergone profound change during the last century. In the new multi-racial, multi-cultural, multi-faith society which is now evolving, *bona fide* religious minorities which were virtually unknown in the UK fifty years ago are now becoming firmly established as positive and valuable elements of modern society. These *bona fide* religious minorities – and as recent studies have shown, especially the Muslims – are in urgent need of the protection of the law, both civil and criminal, from those people (however few or many) who wish to discriminate against them by insulting them, or by humiliating them, or by driving them out – or even by destroying them.

Thank you for considering these submissions. May they be of assistance in securing Article 9 religious rights for all the sincere followers of all the bona fide religions.

Ahmad Thomson

Barrister

Deputy-Chairman, the Association of Muslim Lawyers

17th October 2002