

RELIGIOUS OFFENCES BILL (HL)

RESPONSE FROM

THE

**M**USLIM

**C**OUNCIL

OF

**B**BRITAIN

TO THE HOUSE OF LORDS, SELECT COMMITTEE

**7 August 2002**

# **THE MUSLIM COUNCIL OF BRITAIN**

## **RESPONSE TO THE HOUSE OF LORDS SELECT COMMITTEE ON RELIGIOUS OFFENCE**

**In the name of God, most Gracious, most Merciful.**

### **1. INTRODUCTION**

- 1.1. The Muslim Council of Britain (MCB) is an umbrella organisation with over three hundred Muslim bodies and associations including mosques as its affiliates. This response is based upon consultation with affiliates and interested individuals. The response also relies on previous submissions made by the Muslim community and others to the extent set out herein. In this context we should like to make specific reference to The Need for Reform (a document published by the UK Action Committee on Islamic Affairs in 1992); The Second Review of the Race Relations Act (published by the Commission for Racial Equality in 1991); and Electing to Listen (a document published by the MCB in 1999).
- 1.2 This response only covers the issues that the Select Committee is specifically considering and public notice whereof has been given. As we understand it, the Select Committee is inquiring into “whether to retain, amend or abolish long standing offences such as blasphemy; and the merits or otherwise of the introduction of a new offence of inciting religious hatred.” The Select Committee, we understand, also wishes to receive submissions on any other issues in relation to criminal offences arising out of religious discrimination.
- 1.3 We understand that the Select Committee is not interested in receiving submissions on the issue of religious discrimination as a civil wrong. We believe that given its proximity to the issues that the Select Committee is considering, the exclusion of the need for a comprehensive law on religious discrimination is unfortunate and unhelpful. We firmly believe that the absence of protection from discrimination on religious grounds provides an important backdrop and context for the debate on and consideration of the issues that are exercising the Select Committee. We also believe that there needs to be a comprehensive audit of all laws, civil as well as criminal, to ensure that the UK laws on religious freedom are in accord with our obligations under international law and also reflect our diversity.
- 1.4 We should like the Select Committee to take due account of the incontrovertible evidence (some of which we have annexed to this response) that Muslims in the United Kingdom feel particularly vulnerable, insecure, alienated, threatened, intimidated, marginalized, discriminated and vilified since September 11 tragedy. With regard to the position of Muslims in the United Kingdom prior to September 11 we should like the Select Committee to consider most carefully and give due weight to the Runnymede Trust report on Islamophobia.

## **2. THE LAW OF BLASPHEMY**

- 2.1 The current law on Blasphemy only protects the Anglican faith and does not cover any other faith. It is therefore discriminatory. However our view is that it would be wrong to abolish it. As Muslims, our faith requires belief in and reverence for other prophets, including Prophets Abraham (Ibrahim) Isa (Jesus Christ) and Musa (Moses). We covet no freedom to commit sacrilege against other faiths. It is not our position that if Islamic sanctities are not protected against sacrilege, then the existing protection of the Anglican faith should also be removed. Despite its archaic character and extremely rare use, we would support representatives of the Anglican faith if it were their wish to retain the law on blasphemy in its present form to protect the Anglican faith. We believe that the abolition of the law on blasphemy would mean negative equalisation.
- 2.2 The Muslim community would like to see the early introduction of a law that makes it a criminal offence to vilify any religious belief. In seeking criminal sanctions against vilification, we recognise that it has arguably adverse consequences on right to the freedom of speech. However it is our view that this restriction on the freedom of speech has not been an issue with regard to the law on Blasphemy and therefore should not be seen as a serious issue or an impediment with regard to any law that protects doctrines and beliefs of other religions.
- 2.3 The Muslim community, in the view of the MCB, would not like to see the blasphemy law repealed. We do not think that in its present form its amendment to cover other Christian groups and other faiths is likely to be possible without major re-drafting. We would prefer a new law that will cover all faiths from vilification. The minority view of the Law Commission, which considered the offence of blasphemy in 1985, was that rather than abolishing the common law offence of blasphemy the preferable course would be to enact a law, which would be free of the defects of the present blasphemy law. On the issue of curtailment of the freedom of expression, the minority view was that it was the duty on all citizens in society with its multi racial, multi faith and secular make up not purposely to insult or outrage the religious feelings of others. They concluded that the drafting of a new statutory offence, although difficult could be achieved. We are in full agreement with those views.
- 2.4 We rely on and commend to you the statement of Lord Scarman made in *R v Lemmon* (1979) 617. Lord Scarman said, "I do not subscribe to the view that the common law offence of blasphemous libel serves no useful purpose in the modern law. On the contrary, I think that there is a case for legislation extending it to protect the religious beliefs of non- Christians. The offence belongs to a group of criminal offences designed to safeguard the internal tranquillity of the Kingdom. In an increasingly plural society such as that of modern Britain it is necessary not only to respect the differing religious beliefs, feelings and practices of all but also to protect them from scurrility, vilification, ridicule and contempt ... my criticism of the common law offence of blasphemy is not that it exists but it is not sufficiently comprehensive. It is shackled by the chains of history."

### 3. INCITEMENT TO RELIGIOUS HATRED

- 3.1 Article 20 (2) of the International Covenant on Civil and Political Rights says, “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” The United Kingdom is a signatory to this international treaty. We do not have a law that prohibits discrimination on grounds of religion. We do not, on the main land of Great Britain have a law that makes incitement to religious hatred an offence. It has been our view and the view of the Commission for Racial Equality (see Second Review of the Race Relations Act 1976) that our government is in breach of its obligations under international law for not protecting religious minorities from being victims of violence, harassment and intimidation for their belief. The CRE said, “Both incitement to hatred against a religious group and discrimination against a person because of membership of that group (unless it is recognised as an ethnic group as in the case of the Jews and Sikhs) are lawful in Great Britain, but not in Northern Ireland. Yet in international treatment of human rights religious and racial discrimination are treated similarly.” It went on to say, “In principle there is a strong case for saying that there should be uniform law on incitement to religious hatred across the whole of the UK. In practice, there will be an increasing need for such a law, if people identify themselves, and are identified by others, with their religious as much as national origin. It cannot be any more acceptable to stir up hatred against people because they are seen as Muslim than to do so because they are seen as Pakistanis, if it is accepted that people have the right to practice the religion of their choice. The UK has accepted that right: it is enshrined in Article 9 of the European Convention on Human Rights (based on the Universal Declaration of Human Rights).” The Human Rights Act 1998 has made the European Convention on Human Rights part of the United Kingdom law and hence it is strongly arguable that the governments’ failure to protect people from violence, harassment, intimidation because of their faith or belief is contrary to its obligations under international as well as the domestic law.
- 3.2 On 15 October 2001 the Home Secretary announced his intention to introduce a law on incitement to religious hatred. This was part of a package dealing with anti –Terror laws (Anti-Terrorism, Crime and Security Bill). Because of its timing and its perceived link to terrorism of which Muslims stand most unjustly accused, we, together with a number of other Muslim organisations expressed reservations. We did not oppose the Home Secretary’s proposal to enact law on incitement to religious hatred. After all Muslims have been asking for and are in dire need of a law that criminalizes incitement to religious hatred. In the event unfortunately the Home Secretary abandoned his proposal on incitement to religious hatred. However the fact that the government presented a proposal to have a law on incitement to religious hatred is evidence of their recognition of its pressing need and withdrawal from the position taken by previous governments that drafting difficulties in formulating the law would be too difficult to overcome. We support and commend the government for its commitment to a multi faith and multicultural society in Britain, which is inclusive and cohesive. If the government fails to make incitement to religious hatred a criminal offence it

will validly be exposed to the allegation of paying lip service to diversity agenda. It will show a serious discrepancy between rhetoric and practice.

- 3.3 The incitement to religious hatred proposals in the Anti-Terror, Crime and Security Bill suggested the amendment of the Public Order Act 1986 to extend it to cover “religious” as well as “racial” hatred. Whilst expressing reservations related to the timing of the proposal, we, in partnership with a number of other Muslim organisations had asked, that the proposals should incorporate certain safeguards to ensure that the application of the proposed new law would be effective and equal. We were concerned that the proposed new law had the potential to be used as an instrument of targeting and oppressing Muslims rather than affording protection from others who stir hatred against them for being Muslims.
- 3.4 Amendment of the relevant provisions of the Public Order Act 1986 (Part 3, Sections 17, 17A, 18, 19, 20, 21, 22, 23 and 29) and Section 24 (2) of the Police and Criminal Evidence Act 1984 to make the offence an arrestable offence is one way of achieving the aim of making incitement to religious hatred an offence. We note that the Religious Offences Bill under your consideration has taken this route to making incitement to religious hatred an offence. In principle we support the proposal. However we urge that the proposed new law must properly take account of the unsatisfactory history of the relevant provisions of the Public Order Act 1986 so as to ensure that the amendments are free from previous baggage and that the law is actually strengthened to give meaningful protection to victims of hatred.
- 3.5 For incitement to racial hatred provisions under the Public Order Act 1986 prosecutions may only be brought by or with the consent of the Attorney General. For a variety of reasons this does not appear to have worked very well in that there have been very few prosecutions and in many of such prosecutions it is the people of Black colour or race who have been prosecuted. Hitherto the Attorney General’s office has been extremely reluctant to prosecute people for racial hatred. If the Attorney General were to maintain such a disinclination to prosecute, there would be genuine cause for concern, given the current hostility against the Muslims in the media.
- 3.6 We note that in the amendments proposed in the Religious Offences Bill, there is no amendment in relation to the initiation of prosecution by or with the consent of the Attorney General.
- 3.7 The office of the Attorney General is a political office and in the new climate of supremacy of human rights and the acknowledgement of the need for complete transparency in the exercise of administrative powers, we invite the Select Committee to seriously consider whether it is still appropriate to require prosecutions to be brought by the Attorney General himself or with his consent. We believe that it is desirable to de-politicise acts that are potentially criminal. We recognise the need to regulate prosecutions in this area since such prosecutions have an element of public interest at stake but we cannot see why such decisions should not be left to the Director of Public Prosecutions, the normal prosecuting authority.

- 3.8 If no change is intended in the requirement that prosecutions for incitement can only be brought by or with the consent of the Attorney General, we would ask that:
- a) The Religious Offences Bill should require the Attorney General to publish the criteria that are used in his decision to prosecute;
  - b) The Religious Offences Bill should also place upon the Attorney General a duty to give full and reasoned decision where he is requested to give consent but refuses to;
  - c) The Religious Offences Bill should also require the Attorney General to submit an annual report to the Parliament with full ethnic and religious breakdown of matters that came or were brought to his attention for prosecution specifying the action that he took in each case.
  - d) The Attorney General's reports on the incitement legislation should be presented to the House of Commons Home Affairs Select Committee once every two years for scrutiny and also to the Joint Committee on Human Rights.
  - e) The Select Committee should recommend the publication of a Code of Practice to ensure a comprehensive system of reporting and recording all incidents and investigations under the new incitement legislation.
  - f) A Steering Group "to increase trust and confidence in policing" amongst the faith groups (along the same lines as the Lawrence Steering Group) should be established with the purpose and power of monitoring the implementation of the Code of Practice and assess the effectiveness of the incitement legislation. The Steering Group should have representatives of all the major faith groups as its members.
- 3.9 The other way of making incitement to religious hatred a crime is to consider extending the relevant law on incitement to religious hatred in Northern Ireland to the rest of the Kingdom. Section 8 of the Public Order (Northern Ireland) Act 1987 is relevant. It is accepted that the experience in Northern Ireland of prosecutions for incitement to religious hatred has perhaps been only marginally better than the experience in successful prosecutions of incitement to racial hatred on the mainland. Nevertheless it is an option that needs serious consideration. Same applies to the New South Wales Act with particular regard to a two stage process on complaints of incitement – the first stage involving mediation through a specially set up Commission and the second stage requiring referral to the Attorney General for prosecution following failure of mediation.
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## **APPENDICES:**

1.       **THE NEED FOR REFORM**  
(Published by the UK Action Committee on Islamic Affairs)
  
2.       **THE SECOND REVIEW OF THE RACE RELATIONS ACT 1976**  
(Published by the Commission for Racial Equality)
  
3.       **ELECTING TO LISTEN**  
(Published by the Muslim Council of Britain)
  
4.       **ISLAMOPHOBIA, A CHALLENGE FOR US ALL**  
(Published by the Runnymede Trust)
  
5.       **ADDRESSING THE CHALLENGE OF ISLAMOPHOBIA**  
(Published by the Commission on British Muslims and Islamophobia, 2001)
  
6.       **LIST OF AFFILIATES APRIL 2002**  
(Published by The Muslim Council of Britain)