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LESS EQUAL THAN OTHERS

NASAR MEER

EQUALITY FOR BRITISH MUSLIMS LIES BEYOND RACE AND
RELIGION – IT'S TIME TO BRING THE LAW UP TO DATE

It is now over 30 years since the introduction of the third Race Relations Act (RRA) cemented state sponsorship of race equality. Alongside its broad remit spanning public and private institutions, a recognition of indirect discrimination and the imposition of a statutory public duty, it also created the Commission for Racial Equality (CRE) to assist individual complainants and monitor the implementation of the Act.

The difficulty with this legislation for Muslims has long been an issue of categories. The protections that it creates have never been extended to Muslim minorities on the grounds that they are not an ethnic or racial grouping within the application of the law. In a somewhat tautological fashion, the Act conceives racial and ethnic groups as 'those defined by racial grounds i.e. race, colour, nationality (including citizenship) or ethnic or national origins. All racial groups are protected from unlawful racial discrimination under the RRA'.

So the RRA covers 'race' and not religion. Yet this same legislation has been extended – in my view rightly – to Sikh and Jewish religious minorities. In the famous House of Lords ruling that made Sikh inclusion possible, and which simultaneously consolidated Jewish inclusion, it was concluded that 'it would be absurd to assume that Parliament can have intended that membership of a particular racial group should depend on scientific proof that a person possessed the relevant distinctive biological characteristics . . . it is clear that Parliament must have used the word in some more popular sense'. And yet in the cases of *Nyazi v Rymans Ltd* (1988), *Malik v Bertram Personnel Group* (1990) and *CRE v Precision Engineering* (1991), Muslim heterogeneity has been deemed sufficient to disqualify their inclusion as an ethnic or racial grouping.

This is a highly iniquitous anomaly. Jewish minorities in Britain can incorporate Ashkenazi Jews from Poland, Berber Jews from Algeria and African Jews from Ethiopia – all of whom may have different languages, customs and cultures. It is also feasible that Sikhs, through conversion, could incorporate different ethnic groupings. What this means is that although some religious minorities can be ethnically diverse and still comprise ethnic and racial groupings under the terms of the Race Relations Act, Muslims cannot.

A knock-on effect of such precedents is that other legislation such as the Public Order Act (1986) – which introduced the criminal offence of incitement to racial

hatred (and outlawed the use of ‘threatening’, ‘abusive’ or ‘insulting’ words or behaviour with the intention of stirring up racial hatred) – followed the same rationale in excluding Muslims. This means that neither the Race Relations Act nor the Public Order Act can be invoked to prevent discrimination or hate speech directed specifically at Muslims, even where the crucial part of their identity – being Muslim – is the basis of the discrimination or incitement.

Such binary distinctions between race and religion seem ludicrous when we recognise that many British Muslims recount heightened discrimination and abuse when they appear ‘conspicuously Muslim’. A Muslim appearance, whether or not the individual is in fact Muslim, can be a reviled target and a signifier for all things Muslim or Islamic. The increase in personal abuse and everyday racism since 9/11 and 7/7, in which the perceived ‘Islamic’ appearance of the victim is the central reason for abuse (resulting in Sikhs and others with an ‘Arab’ appearance being attacked for ‘looking like bin Laden’), suggests that racial and religious discrimination are much more interlinked than the current application of civil and criminal legislation allows.

This racism therefore vilifies Muslims in addition to degrading the history of Islamic civilisation, which is exactly how anti-semitism operates. Yet existing provisions have meant that when a third party (or an entire group) have encouraged an attacker to assault a Muslim on a bus or train because they were wearing the *hijab*, beard, tunic or turban, or walking from a mosque for example, they could not be prosecuted in the same way that race-hate inciters could be. This stemmed from a blind spot in the Public Order Act in which only incitement to *racial* hatred as denoted by ‘hatred against a group of persons defined by reference to colour, nationality (including citizenship) or ethnic or national origins’ is covered (the definition of ‘ethnicity’ in section 17 of the Act adopts that established under the application of RRA legislation).

It is these sorts of anomalies in equality and non-discrimination legislation that have allowed the British National Party (BNP) to campaign at the last two general (and countless local) elections on what it publicly describes as ‘the Muslim problem’. Indeed, in one case, the London Borough of Merton asked the Crown Prosecution Service (CPS) to prosecute those engaged in anti-Muslim incitement, following the distribution of offensive and threatening material by a BNP member. This was refused on the grounds that Muslims were not a racial group and therefore not covered by the Act despite the same BNP member pleading guilty to distributing similar material and inciting racial hatred against Jewish minorities in the same borough. Elsewhere, the CRE has recounted how, in May 2004, it failed to persuade the West Yorkshire CPS to prosecute the BNP for distributing a leaflet headed ‘ISLAM: Intolerance, Slaughter, Looting, Arson, Molestation of women’ in an area with existing community tensions. It is highly



*Muslim dress can be a target for abuse. Whitechapel, east London
Credit: Julian Lass*

significant, then, that British Muslims are consistently – and considerably – more likely to say that they feel unsafe in their homes and in their neighbourhoods.

This is why Muslim bodies have long campaigned for incitement to religious hatred legislation, and yet when such legislation was eventually proposed it faced enormous opposition from a coalition of satirists and liberals, conservatives and Christians who misconstrued its intention and presented it as a group veto for Muslims. Thus instead of viewing it as a corrective to the sorts of anomalies that have arisen from a very narrow and inconsistent definition of ‘race’ and ethnicity, the comedian Rowan Atkinson, Liberal Peer Lord Anthony Lester, Senior Barrister David Pannick QC, *Guardian* and *Independent* writers and intellectuals Polly Toynbee and Joan Smith, the Conservative front bench and former Archbishop of Canterbury Lord Carey, among others, all presented the legislation as an attempt to curtail freedom of speech in general, and criticism of Islam in particular. That there was little attempt by anti-discrimination campaigners with impeccable credentials, particularly Lord Lester, to understand the experiences of Muslims has continued to inform the view that the discrimination faced by some groups is less urgent or important than that faced by others.

Indeed, one of the most striking features of the public and media discourse was this gap between Muslim groups (who argued that the recourse to law was

necessary at a time of increased prejudice, intimidation and incitement to hatred) and the mainstream media, which presented it as an example of Muslim incompatibility with British culture and tradition. Contrary to viewing it as an attempt to incorporate a confident Muslim presence into the public sphere, it was argued that Muslims were seeking to put their beliefs beyond scrutiny. For example, Toby Young in the *Mail on Sunday* encouraged readers to battle against a continuing thread of 'fundamentalism' since 'they've been lobbying for a change in the law to make it illegal to attack the Islamic religion ever since Salmon Rushdie published *The Satanic Verses*'. This sort of rationale licensed Polly Toynbee to openly and unrepentantly state: 'I am an Islamophobe and proud of it.' At the same time, Leo McKinstry told the *Express* readership that the legislation 'is solely based on the government's eagerness to pander to Muslim fundamentalism, whose aggressive mentality treats even the mildest criticism as an outrage'.

This kind of opposition meant that a much weaker instrument was eventually achieved so that it remains a matter of doubt as to whether it will be able to address the sorts of cases mentioned above. The opposition to the legislation was also informed by a general suspicion of 'fundamentalism', 'radicalism' and 'extremism' amongst Muslim communities and, specifically, the fear that such legislation would buttress or further encourage these inclinations.

The problem is that such terms are highly contested and valid only after careful qualification, not least because the divisions between categories of 'extremists' and 'moderates' not only depend on context but are also highly porous and inevitably based upon political value judgements. Yet our public and media discourse often assumes a link between religious piety and the threat of violence, which informs the view that any Muslim is a potential terrorist because the violence perpetrated by Muslims evolves out of something inherent in Islam.

This is a tendency frequently displayed in the climate since 9/11 and is epitomised by the category of 'Islamic terrorism'. Indeed Tony Blair often proceeds with this assumption, for example when he referred last year to 'a new and virulent form of ideology associated with a minority of our Muslim community'.

One of the arguments such views have prompted is that 'moderate Muslims' need to take the lead in fighting the extremism in their midst; to reclaim the centre ground and to connect Muslims to mainstream democratic politics. Thus the Foreign Secretary, Margaret Beckett, has asked Muslims in Britain 'to stand up to extremists', Secretary of State for Communities Ruth Kelly has stated that it is a requirement for Muslim organisations to take 'a proactive leadership role in tackling extremism and defending our shared values', Health Secretary Patricia Hewitt has told Muslims 'in positions of responsibility and leadership' to 'stand up against the propaganda and against the perverted form of extremist Islam that a

dangerous minority in the Muslim community wants to impose', while the Home Secretary John Reid famously offered parenting advice in instructing Muslim parents to 'look for the telltale signs now and talk to them before their hatred grows and you risk losing them forever'.

What these views ignore is that Muslims in Britain have been doing exactly this by demanding parity and equality long before the general suspicion and fear of terrorism cast a shadow over them. Indeed 'moderate Muslims' have been at the forefront of challenging anti-Muslim racism and seeking parity with other ethnic and religious minorities, often through an involvement with mainstream political organisations such as the Labour Party. This is the point we had reached in 1997 when New Labour came to power and helped to establish the Muslim Council of Britain (MCB), and this is where we need to refocus today.

Although it might be true, to echo Blair, that the rules of the game have changed, it remains the case that in seeking an equality that works for Muslims in Britain both the players and spectators have remained the same. This is an equality that takes into account the importance of religion alongside the social contingencies of a racism that goes beyond colour prejudice. For if principles of non-discrimination are an important part of justice and equality, then Muslims in Britain have traditionally fallen between these two legislative traditions: while the first allows for the operation of human rights, such as the right to practise religion without fear or intimidation, the second provides redress from discrimination that promotes negative attitudes based upon an individual's real or perceived membership of a group. As the sociologist and political theorist Tariq Modood has been arguing for nearly two decades, what we need to do is to expand the idea of equality to include Muslims within both in order to find an 'appropriate balance between civic attitudes and policies promoting commonality and respecting difference'. □

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