What follows are the main policy sections from the text document “The Integration of Muslims in Britain: An Account and Analysis of the Legal and Non-Legal Equality and Security Initiatives during the New Labour Years of 1997-2010, British Muslim Engagement with Them and Their Impact on Muslim Integration in British Society.” by M. A., Aziz. 2018, SOAS, London, UK. The document was analysed using latent dirichlet allocation.

**The Racial & Religious Hatred Act 2006: Its Passage into Law**

The Racial & Religious Hatred Act 2006 received royal assent on 16 February 2006 and most of its provisions came into force on 1 October 2007. The key advocates for this legislation have in the main been British Muslim communities.

The General Elections of 1997 brought in a new Labour government. Whilst this new government had a landslide majority in the House of Commons, it was nevertheless aware that many of its MPs (including some of its senior cabinet ministers, eg, Jack Straw MP and Frank Dobson MP) came from constituencies with a significant Muslim population, where the Muslim vote was critical to winning those seats – and even if this was a very reductive analysis of the dynamics in these communities, the Muslim voice, its concerns and demands, was therefore not to be ignored. From very early on in government, therefore, New Labour struck a strategic relationship with the newly formed Muslim Council of Britain (MCB), modelled on the Board of Deputies of British Jews, and emerging as the most representative Muslim umbrella organisation in Britain.[[1]](#footnote-1) Whilst this in no way meant that British Muslims now had an open door to legislative changes, it did provide a level of access to politics not experienced by British Muslims before and made it more likely to bring those legislative changes if the Muslim leadership was able to employ this astutely. The leadership took some time learning to do this effectively, but did on the whole – eventually – manage to convert this access, and the significance of the Muslim vote, to some concrete legislative gains for British Muslims. One such gain was the Racial and Religious hatred Act 2006.

Alongside the change in the political landscape in 1997, the Muslim leadership was assisted by another important development – the wider articulation of the British Muslim demand in a language that policy and law makers could engage with, as first presented by the An-Nisa submission in 1992. This was most notably captured by a landmark report in 1997 by the Commission on British Muslims and Islamophobia, convened a year earlier by the Runnymede Trust.[[2]](#footnote-2) The intention of the Commission was twofold: to counter Islamophobic assumptions that Islam is a single monolithic system, without internal development, diversity and dialogue; and to draw attention to the principal dangers which Islamophobia creates or exacerbates for Muslim communities, and therefore, for the well-being of society as a whole. The report also presented in clear English the evidence it had gathered on the British Muslim experience of Islamophobia and concluded with sixty recommendations. Some of its key observations, explorations and recommendations included: examining the role of the media in reinforcing Islamophobia and discussing the responsibilities of journalists; noting the vulnerability of Muslims to physical violence and harassment – the essential point being that whatever the motivations of racist attackers, the consequence of this kind of violence for Muslims was that they were unable to play a full part in mainstream society;[[3]](#footnote-3) and considering the twin themes of social inclusion and cultural pluralism within the education system.[[4]](#footnote-4) Most importantly, for the purposes of this study, however, the need for legal changes was clearly identified throughout the report – which, it argued, was critical to drive the changes in public opinion required to challenge Islamophobia in British society. The articulation of and evidence on the British Muslim experience of Islamophobia, as presented in the Runnymede Trust report, was subsequently bolstered by a string of other research and publications, and the picture was made all the clearer after the 2001 Census question on religion. The additional research and Census findings suggested that in real and comparative terms British Muslim communities suffered enormous disadvantages as compared to any other racial or religious group.[[5]](#footnote-5) This created a new momentum urging the need for greater protection – albeit further shifting the focus from protecting Islam to protecting Muslims.

On the eve of the new millennium, however, British Muslims were still facing many legal anomalies in terms of protection from religious discrimination. Whilst, as already mentioned, only the Church of England enjoyed protection from the law of blasphemy, some other religious groups in the UK enjoyed protection from the law in other significant areas. The Race Relations Act 1976 (RRA 76), provided protection against discrimination on the grounds of the statutory definition of ‘racial group’.[[6]](#footnote-6) ‘Racial group’ was defined by markers including race, colour, nationality and national or ethnic origin, but not religion or belief. The definition of ‘racial group’ was, however, extended in the early 80s to include mono-ethnic religious groups, like Sikhs and Jews,[[7]](#footnote-7) but not multi-ethnic religious groups like Muslims and Christians.[[8]](#footnote-8) This definition of ‘racial group’, developed in civil anti-discrimination legislation, was adopted wholesale in the criminal law when the Public Order Act 1986 incorporated the criminal offence of incitement to racial hatred.[[9]](#footnote-9) The same definition was subsequently also adopted for the aggravated offences of harassment, violence and criminal damage motivated by racial hatred, as introduced by the Crime & Disorder Act 1998,[[10]](#footnote-10) and for the purposes of the Race Relations (Amendment) Act 2000. The result was an iniquitous anomaly in the law producing a hierarchy of protected faith communities: mono-ethnic faith communities, like the Sikh and Jewish communities, were protected from discrimination, benefited from a positive duty on public authorities to promote equality, and protected from the aggravated offences of harassment, violence and criminal damage motivated by racial hatred, as well as the incitement of such hatred; multi-ethnic minority religious groups, like Muslims, did not on the whole benefit from any such protection or provisions, unless it could be shown that the treatment, behaviour or circumstance was indirectly racial; and finally, the multi-ethnic majority religious group, the Christians, were not covered at all, but uniquely protected from blasphemy – we shall refer to this set of anomalies hereon as the ‘mono/multi-ethnic faith communities anomalies’.[[11]](#footnote-11)

One of the earliest concrete efforts towards translating the momentum for change into tangible law was during the Crime and Disorder Bill of 1998.[[12]](#footnote-12) The essence of the effort was captured in a leaflet produced by a consortium of organisations led by the 1990 Trust.[[13]](#footnote-13) The leaflet argued that the Government was rightly, through the Crime and Disorder Bill, making the fight against racism stronger, but it was missing the opportunity of making the fight broader as well – without which certain forms of racially aggravated crimes (those centred on multi-ethnic religions, often using these religions as a surrogate for race) would not be treated with sufficient rigour, and many injustices and anomalies would arise as a result. The leaflet cited some graphic examples that would bring the law into disrepute, and even ridicule, and suggested that the problems could be avoided if a small but significant amendment was made to the Bill – if the words ‘or religious’ were added after the word ‘racial’ in ss.22(1)(a) and 22(1)(b) of the Bill. However, in order to be seen as leading the campaign, the Muslim Council of Britain, with its new strategic partnership with and access to government, decided to run with this point separately to the group behind the leaflet,[[14]](#footnote-14) but in the end, the concession achieved by the MCB through the Rt Hon Jack Straw MP, the Home Secretary,[[15]](#footnote-15) not only undermined the group and its expert understanding of legal drafting, but was also of little actual worth – not extending the provision to cover religion in a way that would assist Muslims as Muslims.[[16]](#footnote-16)

What was denied in the 1998 Act (CDA 1998), however, was freely offered in the Anti-Terrorism, Crime & Security Bill 2001 (ATCSB 2001). At s39 of the Bill, it read:

39 Religiously aggravated offences

(1) Part 2 of the Crime and Disorder Act 1998 (c. 37) is amended as set out in subsections (2) to (6).

(2) In the cross-heading preceding section 28 for “Racially-aggravated” substitute “Racially or religiously aggravated”.

It did not escape the Muslim community at this point, however, that the offer was a carrot or sweetener in what was otherwise a draconian piece of legislation. Thus, whilst three years earlier it was enthusiastically campaigned for, when it was offered in the ATCSB, it was received with far more caution and deliberation. In a briefing paper to Muslim community organisations and leaders, the Forum Against Islamophobia and Racism (FAIR) spelt out the positives and negatives of the offer.[[17]](#footnote-17) In favour of the legislation, it pointed out that there was no principled distinction between race and religion in this instance and that if there existed aggravated offences on grounds of race then this should be extended to religion. The brief suggested that this would remove some of the inequalities in the law arising out of the mono/multi-ethnic faith communities anomaly as introduced by *Mandla v Dowell Lee*,[[18]](#footnote-18) and mentioned above. It conceded, however, that this approach may not satisfy all religious minorities, some of them arguing on occasions that religions should not be ethnicised, but allowed to stand on their own. Nonetheless, the briefing paper further suggested that, if nothing else, the legislation would be of symbolic importance and would serve a deterrence effect, and that concerns about the exercise of discretion by law enforcement agencies and officers could be addressed through education of those involved in the criminal justice systems – ie, through police, CPS and judicial codes of practice and training.[[19]](#footnote-19) Against the legislation, FAIR highlighted the ‘exercise of discretion’ concerns as expressed by practitioners who argued that such provisions in the criminal law vested too much subjectivity in criminal justice institutions which had a record of ‘institutional racism’ – eg, the police and the CPS. The legislation could be used against the very minority communities it was to protect. Some of the arguments against the legislation were in favour of returning to the position before the CDA 1998 – ie, following *R v Ribbans*,[[20]](#footnote-20) the position that it is sufficient to leave this matter to the sentencing discretion of judges. The briefing further pointed towards concerns about ‘specific and asymmetrical risks’to the Muslim community, arguing that, with clear evidence of deep disadvantages in Muslim communities (as already discussed above), it was more likely not to benefit from this legislation, but to fall foul of it.[[21]](#footnote-21) Finally, the briefing also mentioned the possibility of a backlash of grievance and/or resentment if the legislation was seen as particularly for Muslims.[[22]](#footnote-22)

After considerable discussion in the Muslim communities on the proposal from the Home Office, a submission from a consortium of Muslim organisations in 2001 acknowledged that Muslims had previously campaigned for the introduction of aggravated offences on grounds of religious hate – ie, through an extension of s.22(1) of the Crime & Disorder Bill 1998 to include multi-ethnic religious minorities. This was on the ground that if effectively enforced this type of legislative change had the potential to contribute towards reducing and deterring anti-Muslim violence. Based on analysis of the 2000 British Crime Survey,[[23]](#footnote-23) Muslims were concerned at the time that they and their religious buildings and spaces faced a higher risk of crime, and that this was a distinct and deeper form of harm as it specifically targeted Muslims because of their membership of a religious group. They were also concerned that in addition to the harm of crimes such as harassment or assault to individuals, they also caused additional and distinct harms to the whole Muslim community, because the crime was seen as an attack on the whole religious group – and further, these types of crimes had the potential to undermine the State interest in dealing with the social exclusion and isolation of Muslims and their interest in good community relations. The consortium stressed that it continued to recognise that sentence enhancement for racially and religiously aggravated offences can make a substantial contribution to dealing with the increasing risks of physical and verbal abuse of Muslims in the post-9/11 world – not least by sending out a clear and unequivocal message that those who commit acts of violence and harassment of Muslims out of deliberate and conscious hatred of their membership of their religious group will receive a higher penalty under the criminal law.

However, whilst recognising all of this, the consortium stressed that it nonetheless had significant reservations about including the extension ‘at this time’ in a piece of counter-terrorism legislation. The consortium concluded that, given prevailing attitudes towards Muslims, especially in the post 11 September period, there was a substantial risk that Muslims would disproportionately become the victims rather than beneficiaries of this extension in the criminal law. The consortium, therefore, stressed that if the Government was to proceed with this legislation despite the objections of the Muslim community (through the consortium), it must provide certain safeguards to ensure that the discretion of law enforcement agencies is not abused to target Muslims.[[24]](#footnote-24) The consortium was concerned that institutional discrimination within law enforcement agencies, as highlighted in the Macpherson and Denham Reports,[[25]](#footnote-25) was likely to intensify against Muslims after 11 September. They believed that this may in turn exacerbate existing tensions between law enforcement agencies and Muslim communities developed by the northern cities disturbances. They argued that giving the police additional powers at this time, when Muslims were likely to be more heavily policed, was unwise. The consortium highlighted evidence indicating existing low levels of satisfaction amongst ethnic minorities (including Muslim ethnic minorities – eg, Pakistanis/Bangladeshis) with the police in relation to racially motivated crimes[[26]](#footnote-26) and advised that it would be in the interests of the State, as well as the Muslim community, to minimise the risk of further conflict between them.

The consortium suggested that the risks could be managed by ensuring that: (a) the exercise of discretion by law enforcement agencies was monitored and accountable; and (b) there was appropriate training of law enforcement officers about policing issues arising out of ‘religious’ hate crimes. It further suggested that the law enforcement agencies should be supervised, monitored and held accountable by an independent body, which included, *inter alia*, Muslims with knowledge of criminal law, the criminal justice system and civil liberties issues, and individuals and organisations from Muslim and other faith communities. More specifically, it recommended that the Lawrence Steering Committee (still in operation at the time) should be given jurisdiction over key issues relating to the monitoring and implementation of existing racially (and any new religiously) aggravated offences.[[27]](#footnote-27) However, once again, at the very last minute, the MCB broke away from the rest of the consortium, and in subsequent discussions with a junior minister at the Home Office, Angela Eagle MP, agreed to support the Government’s proposal without full sight first of the legal drafting of the safeguards as sought by the consortium, but only a verbal assurance that the same safeguards and reporting arrangements that apply to the prosecution of cases of racial violence will apply to the new offences.[[28]](#footnote-28) The discussion on the other/additional safeguards thus slipped out of sight, and with the MCB’s support, the aggravated offences on grounds of religion and belief were thus included in the ATCSA 2001. Whilst this was very annoying and frustrating for the other Muslim campaigners involved at the time, it did, however, concretise for the first time the possibilities of extending existing race relations legislation to religious discrimination.

The ATCSB 2001 had initially offered not just aggravated offences but also a provision to extend the offence of incitement to hatred on grounds of religion or belief. The response from the Muslim community to this was similar to its response to aggravated offences, and was contained in the same set of documents.[[29]](#footnote-29) However, there appeared to be significantly more opposition to this provision in Parliament, and the Government conceded it in order to push through the rest of the Bill. The proposal was, however, revived in Parliament within weeks of falling out of the ATCSA 2001. In January 2002, Lord Avebury introduced the Religious Offences Bill, a Private Members Bill, in the House of Lords. The Bill sought to abolish several existing religious offences, most notably the offence of blasphemy, and to create a new offence of incitement to religious hatred as proposed in the ATCSB 2001. The Religious Offences Bill quickly passed to committee stage – where, as the House of Lords Select Committee on Religious Offence, it sought extensive evidence from all interested parties, including many faith groups. The key concerns and gaps in the law the Bill, and now the Select Committee, sought to address were neatly summarised in a table produced by FAIR:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Law** | **Type of Offence** | **Group(s) Protected** | **Sentence** | **Remarks** |
| Criminal Libel Act 1819 | **Blasphemy**—the publication of contemptuous, reviling, scurrilous or ludicrous matter relating to God as defined by the Christian religion, Jesus, the Bible or the Book of Common Prayer, intending to wound the feelings of Christians or to excite contempt and hatred against the Church of England or to promote immorality. | The Anglican Church— and its adherents, but only so far as wounding of feelings is concerned. The protection is focused more on the religion rather than the individual follower of the religion. | Possible prison sentence if found guilty. | Blasphemy laws do not protect the non-Anglican Christian denominations or any of the other faiths communities in Britain. Nor do they protect against incitement of religious hatred directed at individuals (including Anglicans) or against harassment, violence and/or criminal damage to property resulting from such incitement. |
| Public Order Act 1986 | **Incitement of Racial Hatred**—to behave in such manner or to use or publish insulting or abusive words with the intent to stir up racial hatred or, in the circumstances, racial hatred is likely to be stirred up as a result of the action. | ‘Racial groups’ as defined by reference to colour, race, nationality or ethnic or national origin (Race Relations Act 1976). The definition of ‘racial group’ is extended by case law to include mono-ethnic religious communities, like Jews and Sikhs. | Maximum of seven years imprisonment. | Although Jews and Sikhs rightly enjoy protection from this offence, the protection is not extended to multi-ethnic religious communities. Thus, Christians, Muslims and most other faith communities in Britain remain unprotected from this offence. |
| Crime & Disorder Act 1998 | **Racially Aggravated Offences**— harassment, violence and/or criminal damage to property motivated by racial hatred or where there is any aggravating evidence of racial hostility in connection with the offence. | ‘Racial groups’ as defined by reference to colour, race, nationality or ethnic or national origin (Race Relations Act 1976). The definition of ‘racial group’ is extended by case law to include mono-ethnic religious communities, like Jews and Sikhs. | Courts may give higher penalties for main offence to reflect the racial aspect to the crime. | Although Jews and Sikhs enjoy protection from this offence, the protection is not extended to multi-ethnic religious communities. Thus, Christians, Muslims and most other faith communities in Britain remain unprotected from this offence. |
| Anti-Terrorism, Crime & Security Act 2001 | **Religiously Aggravated Offences**— harassment, violence and/or criminal damage to property motivated by religious hatred or where there is any aggravating evidence of religious hostility in connection with the offence. | The protection extends to adherents of all ‘religious groups’. ‘Religious group’ has not been defined, but left to the Courts to define should the occasion arise for such a definition. | Courts may give higher penalties for main offence to reflect the religious aspect to the crime. | The Act extends the provisions entailed in the Crime & Disorder Act 1998 to multi-ethnic religious communities, and thereby closes a lacuna in the law creating a hierarchy of protection for different faith groups. |
| **Lord Avebury’s Religious Offences Bill 2002** | ***Incitement of Religious Hatred*—to behave in such manner or to use or publish insulting or abusive words with the intent to stir up religious hatred or, in the circumstances, religious hatred is likely to be stirred up as a result of the action.** | **The protection will extend to the adherents of all ‘religious groups’. ‘Religious group’ may be left to the Courts to define should there arise a need for such a definition.** | **Maximum of seven years imprisonment.** | **The Avebury Bill seeks to extend the provisions of the Public Disorder Act 1986 to ALL faith communities, including Anglicans, other Christians, Muslims and other faiths in Britain presently not protected from incitement of hatred against them.** |

The maturity achieved in the Muslim community over the previous decade, in terms of articulating its demands, was evident in how it dealt with the proposals in the Avebury Bill. On the issue of blasphemy, the community had not quite given up, but its approach was more politically mature. It judged that the mood in public discourse overall was against blasphemy laws, and even laws on vilification – but neither did it see any need to alienate its Christian alliances. The prevalent position in the Muslim community, was therefore, not to advocate for its extension or abolishment, but simply to say that Muslims do not object to the current blasphemy laws as they stand and the protection they provide uniquely to the Anglican Church. They conceded that Muslims had on numerous occasions in the past highlighted that such protection should more fairly be extended to other faith communities, but were now ready to accept that where that was not possible for practical reasons, it did not necessarily follow that blasphemy laws be abolished altogether. From a Muslim perspective, it was argued, it is better for the law to protect at least one religious denomination from blasphemy – on historical grounds, the Anglican Church – than no religion at all. Muslims share many beliefs with Christians, and along with people of other faiths, respect for sacred literature, the feelings of believers, and common values of morality and ethics. If standards in these respects could be maintained in society through the protection of the Anglican faith from blasphemy, then this was better from the Muslim perspective than no protection of these standards at all.[[30]](#footnote-30)

On the issue of incitement, away from the context of the anti-terrorism legislation, there appeared to be a different tone and approach to the proposed provisions.[[31]](#footnote-31) The briefing from FAIR on this occasion positively advocated the need to support such legislation.[[32]](#footnote-32) It suggested that the incitement part of the legislation was particularly important for Muslims for several reasons. First, as a result of international events and the ‘war on terror’, Muslims in Britain had become fair game to various sections of British society with impunity. This occasionally resulted in outbursts of irrational and unfounded Islamophobic attacks against the whole Muslim community, which in turn incited others to abuse, harass and assault Muslims. In this sequence, although there was by this time protection in the law against the second perpetrator (the one that abuses, harasses and/or assaults), the acts of the first perpetrator (the one inciting the second perpetrator), the real cause of the arising hatred towards Muslims, was still going unchecked. As a result, publications by the British National Party (BNP), for example, that sought to incite hatred against Muslims, could not be challenged by the Police or the Courts as there was no law to deal with this kind of incitement. The Avebury Bill sought to curb at source the ability of the first perpetrator to create such mischief. Secondly, the rise of the far right across Europe was of particular concern to the Muslim community, as it was mobilising its support on a specifically Islamophobic agenda. The BNP had rallied support at the previous local government elections across British towns and cities with slogans such as ‘No New Mosques’, ‘Save Christian Britain – No to an Islamic State’ and ‘Boycott Muslim Businesses’.[[33]](#footnote-33) The campaign was sustained with full vigour on the BNP website even after the elections. Grass-roots support for the ideas proffered by the BNP had caused much agitation in some British localities, and had in some cases even led to localised disturbances – eg, in Oldham, Burnley and Bradford. The Avebury Bill, the FAIR briefing argued, if successfully passed into law, could prove invaluable to curb the ability of the BNP and other right-wing and neo-Nazi organisations to create such mischief in the future. And thirdly, there was at the time an EU draft Framework Decision on Combating Racism and Xenophobia under consideration and development by the Council of the European Union. The Framework Decision was to be instrumental in outlawing incitement to religious hatred and stemming the Islamophobic activities of the far right across the EU. However, if attempts to legislate on the issue repeatedly failed in the British context, then the UK Government would not be so keen to support this piece of legislation in a way that it might benefit Muslims across Europe. This would be a real loss to all European Muslims. FAIR thus concluded that it was‘very important that British Muslims, and indeed all faith communities, and those that represent the needs and concerns of these communities, seek to support Lord Avebury’s Bill in every way possible’.

In due course, FAIR and several other key Muslim organisations submitted their written evidence to the Religious Offences Select Committee, and this was subsequently reinforced and augmented by further oral evidence.[[34]](#footnote-34) The evidence provided by the Muslim organisations was decidedly assertive: it advocated for the proposed legislation very strongly – building on the arguments in favour of the legislation as articulated in FAIR’s briefing paper (particularly around legal anomalies, lacunas and loopholes, and the resulting ‘shifting focus of bigotry’); addressing head on the key arguments against the legislation (particularly in relation to free speech, the difficulties involved in defining religion and belief, religion as choice and therefore needing to be open to criticism, and the possible misuse of the legislation); providing copious references to literature from the far right documenting their incitement of Islamophobia to demonstrate what mischief the legislation would address on the ground;[[35]](#footnote-35) and exploring the safeguards that would be required to ensure against its misuse. The evidence was eloquently amplified within the House of Lords Select Committee on Religious Offences by one of its members, Lord Amir Bhatia OBE, who was also the chair of the British Muslim Research Centre and working very closely with the other Muslim organisations.[[36]](#footnote-36)

The Select Committee published its report in June 2003. The report provided an analysis of the arguments for and the merits of each of the legislative options available on each of its areas of interest (blasphemy against religious beliefs, practices and symbols; indecent behaviour at or defilement of religious places of worship; and incitement to hatred of religious communities or members of religious communities). The report did not make any specific recommendations. However, it made some very important observations – most notably that: there was indeed great inequality in the law in how it protected different faith and belief communities from different offences; there were significant gaps in the law, particularly with regards to incitement to hatred on grounds of religion or belief, where there was a call from many quarters for this gap to be filled – for example, from the Police, CPS, Attorney-General and Home Office, as well as international human rights organs like the United Nation’s Human Rights Committee and Committee on the Elimination of Racial Discrimination, the Council of Europe’s European Commission against Racism and Intolerance and Advisory Committee on the Framework Convention on the Protection of National Minorities, and our own parliamentary Joint Committee on Human Rights; civil and criminal law should afford the same protection to people of all faiths and none; and, most importantly, that the UK stood in breach of its obligations under the European Convention of Human Rights, particularly Art.14 taken with Art.9 of the Convention.[[37]](#footnote-37)

On incitement, the report summarised the case for status quo as follows: historically incitement offences have always been used for dubious political ends; there are essential differences between race and religion affecting the degree to which freedom of expression can legitimately and proportionately be restricted for each – religion is based on choice of beliefs, values and practices, and must remain open to trenchant and even hostile criticism in a democratic society where the right to freedom of expression is guaranteed by Art.10; because of the need to balance incitement with freedom of expression, the threshold for the offence would be too high to meet, providing room for avoidance tactics by smart offenders; cases of incitement to religious hatred could be covered under existing common law on incitement and statutory public order legislation; the Attorney-General’s fiat could be politically abused, particularly as it cannot be judicially reviewed; there was no reason to single out incitement to religious hatred from incitement towards other groups, and all such incitement could be dealt with through sentencing guidelines; and incitement on the web would be very difficult to prosecute. On the other hand, the case for extension was summarised as follows: there was a real gap or loophole in the law which was being exploited by the far right to create tensions between communities; members of faith communities have an Art.9 right to be protected from incitement of religious hatred; there was an anomaly in the law in that some faith communities were protected from incitement to religious hatred whilst others were not, which was a breach of Art.9 read with Art.14; there was a demand on the UK to provide legislation against incitement to religious hatred from the highest international authorities on Human Rights; there was a body of established literature of the highest standing asserting that such legislation was a completely acceptable restriction on freedom of expression, including literature from the UN, Council of Europe, and Joint Human Right Committee; the EU’s Justice & Home Affairs Council was debating a draft Council Framework Decision on Racism & Xenophobia which was likely to include incitement to religious hatred as an optional provision; distinctions between race and religion in reality were not always so pronounced, and such distinctions as they effect the balance between incitement and freedom of expression could be adequately catered for through an Attorney-General’s fiat; it was quite possible to make a distinction between hostile criticism and incitement to hatred; extension would send out a powerful message on acceptable behaviour in society; and the law enforcement agencies were almost unanimous that such legislation would be helpful.[[38]](#footnote-38) Whilst, crucially, the report did not make any specific recommendations, the arguments for extension in the report were so strong and well-articulated that the MCB was able to use it as a basis to galvanise a strong alliance of leaders from across faith communities to put out a strong public statement in support of new legislation on incitement on grounds of religion – thus sustaining the campaign for such legislation.[[39]](#footnote-39)

As mentioned earlier, provisions to extend the offence of incitement to racial hatred to religious hatred had been included in the ATCSB 2001, and only dropped after the Third Reading in the House of Lords, after it was widely claimed that the Bill was an inappropriate vehicle for this. However, the Government remained committed to such an extension of the law. In a Declaration in December 2002, appended to the European Framework Decision on Combating Racism & Xenophobia, the Government stated: ‘The UK stresses the importance of preventing violence, hatred and intimidation due to hostility towards a person’s religious convictions. The UK Government has stated that it supports in principle a proposal to make incitement to religious hatred an offence…”.[[40]](#footnote-40) In an interview with the Muslim News, on 28 March 2003, the Home Secretary, the Rt Hon David Blunkett MP, stated: ‘I can’t be anything else but sympathetic to [an offence of incitement to religious hatred] because it was my idea’.[[41]](#footnote-41) In November 2003, the Home Office issued its detailed response to the Select Committee report, in essence agreeing to the key observations in the report, and particularly those suggesting a need to introduce appropriate new legislation against incitement to religion or belief hatred.[[42]](#footnote-42) The Home Office, however, gave no indication of any commitment to a timeframe for such legislation – stating only that it will seek to bring legislation if and when there is an opportunity in the future. In reality, the government was stuck between two difficult positions. On the one hand, it was still unsure as to whether there would be sufficient support for the legislation in Parliament, and on the other, the strong Muslim demand for this in the face of an upcoming election.

The British Muslim Research Centre (BMRC), chaired by Lord Bhatia, had in the meantime, started working with the British Humanist Association (BHA) and Justice, amongst others, to develop a briefing paper for the upcoming House of Lords debate on the report of the Religious Offences Select Committee.[[43]](#footnote-43) The briefing paper rehearsed the strong arguments on the gap in the law and the need for this to be addressed; how effectiveness of the legislation was to be measured; the compatibility of such legislation with the right to free speech as advocated by international, European and domestic human rights monitoring and enforcement bodies; the possible models for such legislation; and the possible safeguards against its abuse. Its primary recommendation was that the Government should enact legislation against incitement to religion or belief hatred as soon as possible – preferably based on a model proposed by the BHA, with suitable modifications to overcome its current deficiencies. The recommendation was based on the following grounds: that numerous international, European and national human rights bodies had demanded such legislation – which in itself was strong proof that such legislation did not conflict with free-speech; that all UK law enforcement agencies favoured such legislation on the ground that it would assist to tackle public disorder and safety issues, and therefore, help in the long term to enhance community cohesion; that there was a real need for such legislation to protect vulnerable minority faith and belief communities from far right activities, as illustrated by the case of BNP activities against British Muslims; that the longer it takes for Government to bring such legislation, the longer these vulnerable communities are exposed to harm and the greater the risk of community tensions; and that if the Government was indeed in breach of its obligations under Art.9 read with Art.14, it needed to rectify this sooner rather than later. The Select Committee’s report and the Government’s response were debated in the House of Lords on 22 April 2004. In her response to the debate, Baroness Scotland of Asthal, a Minister of State in the Home Office, reconfirmed that the Government intended to bring forward proposals for an offence of incitement to religious hatred that would balance the need to protect religious groups with the protection of freedom of speech.[[44]](#footnote-44)On 7 July 2004, the Home Secretary announced in a speech for the Institute of Public Policy Research his intention to introduce an offence of incitement to religious hatred as soon as a legislative opportunity arises.[[45]](#footnote-45) The Home Office Factsheet that followed this speech was based on the BMRC/BHA/Justice briefing for the House of Lords debate on the Select Committee report – with additional reassuring messages for evangelists and others concerned by the legislation, eg, free speech critics and comedians.[[46]](#footnote-46)

The Government’s commitment to new legislation materialised in the Serious Organised Crime and Police Bill*,* as introduced in the House of Commons on 24 November 2004. The proposal was the same as that in the ATCSB 2001 and the Avebury Bill 2002, and was accompanied by a FAQs sheet,[[47]](#footnote-47) regurgitating almost verbatim the Factsheet mentioned above, albeit with some factual updates. The proposal was quickly supported by another alliance of key faith actors brought together by the MCB through a second statement.[[48]](#footnote-48) The proposal was further endorsed on 13 January 2005 by the CRE and Justice at a public meeting in Parliament jointly organised with the BHA and MCB. However, whilst the legislation had now gathered significant support, through strenuous effort in the Muslim community, it still attracted significant opposition from various quarters, which consolidated into a powerful counter-alliance – consisting of a range of religious (both Christian and non-Christian) and secular groupings, and broadcasters, literary figures and comedians, all of whom were concerned about the limitations that the provisions would place on their freedom of speech and expression – in terms of both evangelising and proselytising, and criticism and satire.[[49]](#footnote-49) This opposition was led in Parliament by the formidable Lord Anthony Lester QC, regarded by himself and some others as the father of equality provisions in Britain, but utterly opposed to various equality measures on grounds of religion. The MCB sought hard to strike a compromise with Lord Lester, first through a meeting and then through an exchange of letters. However, the MCB found the ‘pretext amendment’, offered by Lord Lester as a compromise, far too narrow for its needs and unacceptable.[[50]](#footnote-50) The discussions eventually broke down and were misrepresented to the media by the Lester team, which resulted in an acrimonious exchange of articles in the press.[[51]](#footnote-51) Subsequently, the opposition in the Lords, led by Lord Lester, was so formidable that, with the impending dissolution of Parliament, the Government again accepted the loss of the incitement provisions from the Bill to secure its passage – however, this time with an election promise to British Muslims that it will return if New Labour was re-elected.[[52]](#footnote-52)

Following the General Election, the Government did indeed re-introduce the incitement provisions, in the same wording as previously, in the Racial and Religious Hatred Bill 2005. But the opposition expressed in response to the previous attempts to secure these provisions was repeated again on the publication of the Bill – and throughout the rest of 2005, there followed an unprecedented campaign against it by secular groups and evangelical Christians that resulted in a sustained opposition to it in both Parliament and the media.[[53]](#footnote-53) This resulted in the Government suffering extraordinary defeats in the House of Commons over the proposed provisions on 31 January 2006 – in two successive votes MPs backed House of Lords amendments that dramatically narrowed the scope of the law as proposed by the Government. The starting point of the proposed provisions had been as follows:

* 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 –
     1. he intends thereby to stir up racial or religious hatred, or
     2. having regard to all the circumstances the words, behaviour or material are (or is) likely to be heard or seen by any person in whom they are (or it is) likely to stir up racial or religious hatred.

However, the House of Lords amendments removed the words ‘abusive’ or ‘insulting’ and the ‘likely’ test, so that only ‘threatening’ conduct ‘intended’ to incite religious hatred remained. They also introduced a sweeping free speech defence that protected ‘…discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.’[[54]](#footnote-54) The provisions that were finally introduced into law, were therefore, very significantly watered down from what was intended, and have a very high threshold for litigation. The Government had stated in the House of Commons, on 31 January, that if the Lords amendments were passed ‘… it would be virtually impossible to bring a successful prosecution’.[[55]](#footnote-55) Unfortunately, that is exactly what has happened – though the Racial and Religious Hatred Act 2006 created an offence in England and Wales against incitement on grounds of religion or belief, it has remained toothless. Further, the legislation was so contentious in its passage into law that it has not been touched since – either by government or its key proponents or opponents.

1. For an insightful study of the MCB and its relations with the UK government, see: E. Braginskais, The Muslim Council of Britain and its engagement with the British Establishment, in T. Peace (ed.), Muslims and Political Participation in Britain, London: Routledge, 2015, pp.195-214; and J. Birt, Lobbying and Marching – British Muslims and the State, in T. Abbas (ed.), Muslim Britain: Communities Under Pressure, London: Zed Books, 2005. [↑](#footnote-ref-1)
2. Commission on British Muslims and Islamophobia, Islamophobia – A challenge for us all, London: Runnymede Trust, 1997. For a recent reflection on that report, see: C. Allen, Still a challenge for us all? The Runnymede Trust, Islamophobia and policy, Religion, Equalities, and Inequalities, London: Routledge, 2016, pp.113-24. [↑](#footnote-ref-2)
3. Thus, a key recommendation of the report was that religion must be explicitly recognised in hate crimes legislation – ie, the term ‘racial violence’ should be replaced with ‘religious and racial violence’. [↑](#footnote-ref-3)
4. The report noted that Muslim pupils were usually at a severe disadvantage compared with national norms. The Commission recommended that issues of social inclusion and cultural pluralism should be included centrally in citizenship education, formal policies and guidance should be developed on meeting the pastoral, religious and cultural needs of Muslim pupils in mainstream schools, and that there should be state funding for Muslim schools. [↑](#footnote-ref-4)
5. For a snapshot of this disadvantage, see Office for National Statistics, Focus on Religion, London: HMSO, 2004. For a more detailed account, see: T. Modood et al., Ethnic Minorities in Britain – Diversity and Disadvantage, London: Policy Studies Institute, 1997, and T. Choudhury, Monitoring Minority Protection in the EU – The Situation of Muslims in the UK, Budapest: Open Society Institute, 2002. For perceptions of religious discrimination, see: P. Weller et al, Religious Discrimination in England and Wales, London: Home Office, 2001. For experiences of anti-Muslim hate and Islamophobia, see: C. Allen and J. S. Nielson, Summary Report on Islamophobia in the EU after 11 September 2001, Vienna: European Monitoring Centre on Racism and Xenophobia, May 2002. For more sectoral disadvantage, see: D. Owen et al, Patterns of labour market participation in ethnic minority groups, Labour Market Trends, Vol.108, 2000, pp.505-10, and S. Saggar, Ethnic Minorities and the Labour Market, London: Cabinet Office, 2003, A. Clancy et al, Crime, Policing and Justice – The Experience of Ethnic Minorities, Findings from the 2000 British Crime Survey (BCS), London: Home Office, 2001, S. Denman, The Denman Report – Race Discrimination in the CPS, London: Crown Prosecution Service, 2001, B. Spalek (ed.) Islam, Crime & Criminal Justice, Devon: Willan Publishing, 2002, and C. Allen, Fair Justice – The Bradford Disturbances, the Sentencing and the Impact, London: Forum Against Islamaphobia and Racism, 2003. [↑](#footnote-ref-5)
6. This is provided in s.3(1), Race Relations Act 1976. [↑](#footnote-ref-6)
7. See Mandla v Dowell Lee [1982] UKHL 7, and Seid v Gillette Industries Ltd [1980] IRLR 427. [↑](#footnote-ref-7)
8. See Tariq v Young, EOR, Discrimination Case Law Digest No. 2; Crown Supplies v Dawkins [1993] ICR 517; and Lovell-Badge v Norwich City College (Case No. 12506/95/LS Dec 1999). [↑](#footnote-ref-8)
9. See s.17, Public Order Act 1986. [↑](#footnote-ref-9)
10. See ss.28-32, Crime & Disorder Act 1998. [↑](#footnote-ref-10)
11. S. Fredman, Equality – A New Generation? Industrial Law Journal, Vol.30(2), June 2001, pp.145-188. [↑](#footnote-ref-11)
12. There was an earlier effort, a Private Members Bill by John Austin MP, the Religious Discrimination and Remedies Bill 1998. However, the focus of that Bill was on religious discrimination, with a provision on incitement as a bolt on. Like most Private Members Bill, it died an early death because of insufficient time in Parliament. [↑](#footnote-ref-12)
13. The leaflet was entitled: The fight against racism must be broad as well as strong – proposed amendment to the Crime and Disorder Bill, and the arguments in the leaflet were further elaborated in an article: R. Richardson, Potential Nonsense – Reservations about an aspect of the Crime and Disorder Bill, Newsletter of the Association of Muslim Lawyers, Vol.3(1), 1998, p.1. [↑](#footnote-ref-13)
14. The group included the Legal Studies Unit at the Islamic Foundation, 1990 Trust, Association of Black Lawyers, Association of Muslim Lawyers, Bandung Parliamentary Institute and An-Nisa Society. [↑](#footnote-ref-14)
15. See MCB Press Releases: Muslims Lobby for Amendment to Crime and Disorder Bill, 21 May 1998: <http://www.mcb.org.uk/muslims-lobby-for-amendment-to-crime-and-disorder-bill/>; MCB Delegation meets Home Secretary, 17 June 1998: <http://www.mcb.org.uk/mcb-delegation-meets-home-secretary-2/>; Jack Straw Table’s Amendment to Crime and Disorder Bill, 20 June 1998: <http://www.mcb.org.uk/jack-straw-tables-amendment-to-crime-and-disorder-bill/>. [↑](#footnote-ref-15)
16. See L. Maroof and M. Bamiah, Jack’s ‘Straw’ Amendment – More Words that Mean Little, Newsletter of the Association of Muslim Lawyers, Vol.3(2), 1998, p.1, which describes how the Home Secretary had misled the MCB into believing they had attained a change in the law that was not actually the case. [↑](#footnote-ref-16)
17. FAIR, Briefing Paper on Extending the Racially Aggravated Offences in the Crime and Disorder Act 1998 to Religion, 2001 – available in FAIR Files. [↑](#footnote-ref-17)
18. Mandla v Dowell Lee [1983] 2 AC 548, [1983] 1 All ER 1062. [↑](#footnote-ref-18)
19. Indeed, there was some evidence that the Government was already putting these into place at this time – eg, the Lord Chancellor’s Department was developing a scheme for judicial education/guidance specifically around this issue. The APA and other police associations were also putting together guidance on the definition of racial incident and best practice in the training of police officers. [↑](#footnote-ref-19)
20. R v Ribbans [1996] 2 Crim App R (S) 336. [↑](#footnote-ref-20)
21. The fuller argument here was that whilst the Muslim community was more likely to suffer from aggravated offences, it was also more likely to suffer from any legislation as proposed – as provoked members of the community would be less able to navigate language or symbols which fall outside the definitions or requirements of aggravation on grounds of religious bias/motivation/animus, whereas the more organised far right groups by contrast would successfully avoid using language which gives rise to prosecution by expressing the same views in ways which fall just short of the threshold requirement for aggravated offences. [↑](#footnote-ref-21)
22. All these arguments are explored in more detail in M. Malik, Racist Crime, Modern Law Review, Vol.62, 1999, pp.409-24. [↑](#footnote-ref-22)
23. See Clancy et al, op. cit., p.41. [↑](#footnote-ref-23)
24. It should be noted, however, that this objection was not as unequivocal as that of organisations like Liberty – see the Liberty Press Release: Home Secretary’s Anti-Terrorism Bill, 13 November 2001. It is clear that most of the Muslim leaders at the time felt that, the national and political mood being what it was in the aftermath of 9/11, most of the provisions of the ATCSB would go through anyway. The question for them then was whether they could get any silver lining out of the situation for their communities. However, they took the position they did mainly because they felt that by accepting the carrot they would be legitimising the rest of the draconian provisions of the ATCSB. [↑](#footnote-ref-24)
25. W. Macpherson, The Stephen Lawrence Inquiry Report, London: Home Office, 1999; J. Denham, Building Cohesive Communities: Report of the Ministerial Group on Public Order and Community Cohesion, London: Home Office, 2001. [↑](#footnote-ref-25)
26. See Clancy et al, op. cit., p.53. [↑](#footnote-ref-26)
27. The scope of the Lawrence Steering Committee did not at the time cover multi-ethnic religious minorities, such as Muslims. The consortium argued that the scope could be extended to ‘religiously’ aggravated offences, and thus, its work could include oversight of, *inter alia*: a Code of Practice on reporting and recording religious incidents; recording of stop and search of specific multi-ethnic religious minorities, eg, Muslims; inclusion of religion issues within Community Race Relations (CRR) issues; regular HMIC inspections to examine CRR issues; research and training by the Lord Chancellor’s Department and the CPS, which should include issues relating to multi-ethnic religious minorities, eg, Muslims; s95 data on race, which should also include specific information about multi-ethnic religious minorities who do not fall under categories of race or ethnicity; and recruitment of ethnic minority police officers, which should include targets for Muslims. [↑](#footnote-ref-27)
28. # See MCB Press Release: MCB Supports Legislation on Incitement to Religious Hatred, 27 November 2001 – <http://www.mcb.org.uk/mcb-supports-legislation-on-incitement-to-religious-hatred/>.

    [↑](#footnote-ref-28)
29. # This was the case, even though the proposed incitement legislation was supported by organisations like the Discrimination Law Association (DLA) – see: Make religious hatred a criminal offence, The Law Society Gazette, 8 October 2001.

    [↑](#footnote-ref-29)
30. For a fuller articulation of this Muslim position, see FAIR’s response to the Avebury Bill: The Religious Offences Bill 2002 – A Response, London: FAIR, October 2002, pp.3 and 9. [↑](#footnote-ref-30)
31. This was explained in FAIR’s response to the Avebury Bill, op. cit.: ‘It ought to be pointed out that there was some considerable opposition to such legislation recently from the Muslim community. However, it ought also to be clarified that the opposition was not in relation to the idea of a criminal offence of incitement to religious hatred *per se* … The opposition was rather centred around the context in which the legislation was proposed and the perceived purpose of such legislation. ...’ It should be noted, however, that some Muslim groups, like the Islamic Human Rights Commission, retained their opposition to the incitement legislation, and do so to this day. [↑](#footnote-ref-31)
32. FAIR, Protection against Religious Offences, A Briefing on the Avebury Bill, January 2002 – available in FAIR Files. [↑](#footnote-ref-32)
33. For more discussion on this, see: C. Allen, Fear and Loathing – The political discourse in relation to Muslims and Islam in the British Contemporary Setting, Politics and Religion Journal, Vol.4(2), 2017, pp.221-36. [↑](#footnote-ref-33)
34. For the written evidence from FAIR, see: The Religious Offences Bill – A Response, London: FAIR, 2002 – as available at: <http://www.fairuk.org/docs/rof2002.pdf>. The oral evidence on behalf of FAIR was presented by Sadiq Khan, Christopher Allen, Dilwar Hussain and Mohammed Abdul Aziz – as available at: <https://publications.parliament.uk/pa/ld200203/ldselect/ldrelof/95/2101701.htm>. This webpage also includes links to the written and oral evidence provided by the other key Muslim organisations, notably the Muslim Council of Britain and the Association of Muslim Lawyers. [↑](#footnote-ref-34)
35. On closely examining this literature, FAIR concluded: ‘It is clear from the publications and activities of far right and neo-Nazi organisations, like the BNP and the NF, that their campaigns against Islam and Muslims is deliberate and pre-meditated; campaigns that have been devised to sit [just] within existing laws’’ [↑](#footnote-ref-35)
36. A full set of contributions by Lord Bhatia in the Committee and in the House are available in the BMRC Files. [↑](#footnote-ref-36)
37. House of Lords, Report of the Select Committee on Religious Offences, op. cit. [↑](#footnote-ref-37)
38. Note that most of these arguments were taken straight from evidence provided by Muslim organisations and as articulated by Lord Bhatia in the Select Committee. [↑](#footnote-ref-38)
39. Joint Statement by Leaders of Faith Communities, April 2004 – led by the MCB, with the support of the Inter Faith Network for the UK. Statement and related correspondence available in MCB Files. [↑](#footnote-ref-39)
40. The Framework Decision and the Declaration are available at: <https://db.eurocrim.org/db/en/doc/75.pdf>. [↑](#footnote-ref-40)
41. The Muslim News, ‘Muslim resistance movements are terrorists, occupiers are not’, 28 March 2003. [↑](#footnote-ref-41)
42. Home Office, Religious Offences – The Government Reply to the Report from the Religious Offences Select Committee, December 2003: <http://www.official-documents.co.uk/document/cm60/6091/6091.pdf>. [↑](#footnote-ref-42)
43. BHA, BMRC & Justice, Briefing for the debate on Religious Offences in the House of Lords, April 2004: <http://humanism.org.uk/wp-content/uploads/Briefing-on-Lords-debate-on-religious-offences.pdf>. [↑](#footnote-ref-43)
44. See: House of Lords Debate, 22 April 2004, cc.475-476. [↑](#footnote-ref-44)
45. D. Blunkett, New Challenges for Race Equality and Community Cohesion in the 21st Century – A speech by the Home Secretary, London: Home Office, 7 July 2004, p.12. See also: MCB Press Release, Law to Outlaw Incitement to Religious Hatred Welcomed, 7 July 2004. [↑](#footnote-ref-45)
46. Home Office, Incitement to Religious Hatred – Factsheet, November 2004. Available in BMRC Files. [↑](#footnote-ref-46)
47. Home Office, Incitement to Religious Hatred FAQs, December 2004. Referenced in House of Commons Research Paper: R. Kelly, The Racial and Religious Hatred Bill, 16 June 2005 – and available in BMRC Files. [↑](#footnote-ref-47)
48. Joint Statement on Incitement to Religious Hatred, 18 January 2005 – full text provided by Ekklesia at: <http://www.ekklesia.co.uk/content/news_syndication/article_050118hatred.shtml>. [↑](#footnote-ref-48)
49. Some of the key actors in this opposition included the Evangelical Alliance, Christian Institute, National Secular Society and Rowan Atkinson, along with other comedians and radical secularists. [↑](#footnote-ref-49)
50. Lord Lester’s view was that the law should avoid dealing directly with incitement on grounds of religion, as this could have undesirable consequences for free speech, but that it could deal with this where religion was being used as a surrogate for incitement to racial hatred – and hence, his offer of the ‘pretext amendment’. However, the MCB argued that the incitement from the far right was against Muslims as Muslims, not just against Muslims as a marker of their race, and therefore that the protection offered by the pretext model was too narrow. [↑](#footnote-ref-50)
51. See, for example: Nick Cohen, Labour’s Contemptible Election Trade Off, New Statesman, 31 January 2005; and the MCB response at – <http://archive.mcb.org.uk/wp-content/uploads/2016/02/issue56.pdf>, p.16. [↑](#footnote-ref-51)
52. Baroness Scotland of Asthal stated in the House of Lords: ‘We cannot see why it is right to retain protection in law for Jews and Sikhs, but wrong not to extend it to Hindus, Muslims, Christians, Buddhists and other faiths. It remains the firm and clear intention of this Government to give the people of all faiths the same protection against incitement to hatred on the basis of their religion’ – see: House of Lords Debate, 5 April 2005, cc.595-596). [↑](#footnote-ref-52)
53. See, for example: A. Lester, A steamroller to crack a nut, The Guardian, 21 June 2005; and the MCB response to it at – available in the MCB Files. [↑](#footnote-ref-53)
54. See: Racial and Religious Hatred Act 2006, s.29J. [↑](#footnote-ref-54)
55. See: House of Commons, 31 January 2006, cc.189-190. [↑](#footnote-ref-55)