

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM SIKH SANJOG

Overall, Sikh Sanjog are supportive with the majority of the provisions of the Bill. We understand the need to consolidate hate crime and believe that the Bill in its present form achieves this.

Sikh Sanjog would like to draw attention to the following points:

Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995

Sikh Sanjog believe that Section 50A of the Criminal Law (Consolidation)(Scotland) Act 1995 should not be repealed.

It was considered that offences under section 50A could be charged under section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 with a racial statutory aggravation. Section 38 provides an offence of threatening or abusive behaviour.

However, it is the view of Sikh Sanjog that repealing Section 50A offences would lead to a lesser degree of protection for those who are victims to these offences as the section 38 offence only covers “ ‘threatening or abusive behaviour’ that would be likely to cause a reasonable person to suffer ‘fear or alarm’ ”. This is a higher threshold than the section 50A offences which is behaviour that causes alarm and distress. Therefore Section 50A offences cover a higher range of behaviours than the section 38 offence with a racial statutory aggravation.

Abolition of the offence of blasphemy

Sikh Sanjog agrees with the plans for abolition of the offence of blasphemy. We believe that this offence is outdated and, considering it has not been prosecuted in a number of years, is now redundant.

Inclusion of sex as a protected characteristic within the Bill

Whilst Sikh Sanjog believe that the statutory aggravation model should remain the main means for prosecuting hate crimes in Scotland, this should not apply to the characteristic of sex. The complex nature and history of crimes relating to sex such as gender-based violence mean that a more nuanced approach is required in order to be fully inclusive of the effects and causes of gender-based violence and abuse.

Sikh Sanjog strongly believes that a separate offence of misogynistic harassment should be

introduced. Women, particularly within the South-Asian culture, face abuse from male partners and are often considered as the sub-ordinate sex. Thus the stand alone offence of misogynistic harassment will help to set the tone of Scotland's attitude to sexist attitudes and behaviour targeted at women based on solely their gender.

So far legislation related to violence and emotional and physical abuse which is disproportionately suffered by women, has only been introduced in Scotland through the lens of domestic abuse and within the private sphere. Sikh Sanjog believes that the stand alone offence of misogynistic harassment recognises the very public element of abuse that women in particular face in Scotland entirely due to their gender. This includes online harassment as well as other gender-based harassment.

With regards to offence itself, misogyny or misogynistic behaviour will have to be defined within the offence as currently there is no legal definition of either term.

Victim Support

Considering the very low reporting rate for hate crime, Sikh Sanjog strongly believe that this Bill must be accompanied by a strong victim support package. This must include a strong advocacy awareness raising campaign, highlighting what a hate crime is. The campaign must be inclusive of the wide range of ethnicities, cultures and communities which exist in Scotland, thus advertising and marketing should be available in different languages and formats. The package must also include emotional support for victims, which can be done through partnership with third party organisations. Sikh Sanjog urges that third party support offered in this way should be mindful of the diversity of culture and ethnicities which exist amongst victims. Therefore partnership with different cultural and ethnic support organisations should be sought.

Data monitoring Systems

In order to achieve a true and full understanding of the workings and outcomes of the Act once passed, Sikh Sanjog believes that there must be an adequate data monitoring system which contains disaggregated data based on race, religion and ethnicity. The Race Equality Framework for Scotland 2016-2020 states that public authorities in Scotland must monitor and use ethnic data in formulating policies and developing practices.¹ In line with this framework, it is vital that information relating to the ethnicity and religion of the victim is recorded so that accurate studies of this Act once passed can be obtained. The importance of a disaggregated data system can be shown in the impact of islamophobia. It is widely believed that the vast majority of victims of islamophobia are of Pakistani ethnicity. However islamophobia does not only affect people of Pakistani ethnicity as the first victim of islamophobia in the UK was a person who followed the Sikh religion and was of Indian ethnicity. Therefore if disaggregated data existed which included separate categories for ethnicity, race and religion, then we would be able to gain a more accurate picture of the nature of victims, and whom this legislation is actually working for.

¹ <https://www.gov.scot/publications/race-equality-framework-scotland-2016-2030/pages/3/>

Freedom of Expression Provision

Freedom of Expression as covered under Article 10 of the Human Rights Act 1998 and European Convention of Human Rights is a fundamental right which protects the right of freedom of speech which is vital not only because of its power to promote democracy but also its role in uncovering abuses and advancing political, artistic, scientific, and commercial development.² Therefore any interference must be interpreted narrowly.³ However this is not an absolute right and is qualified by the Article 10(2) which sets out instances where interference by State Bodies is justifiable.

In light of its importance, Article 10 is generally viewed as affording a wide scope of protection as it is broadly interpreted to not only include the substance of the information and ideas but also the means in which they are manifested, transmitted and received.⁴ However the broad scope of protection afforded by Article 10 is limited where the impact on expression is consequential to the exercise by the state of its' authority for other purposes.⁵

Therefore Sikh Sanjog are of the view that the freedom of expression provisions, whilst protecting our right to free speech, must be mindful of the instances where state interference will be justifiable. Thus if the communication does interfere with another law or it is necessary in democratic society to halt the act of free speech in that instance, then the article 10 right must be curtailed.

Sikh Sanjog
21 July 2020

² White.R.C.A and Ovey.C, *Jacobs, White and Ovey : the European Convention on Human Rights*, 5th Edition, Oxford University Press, 2010, Oxford (New York). Pg 426

³ Vereinigung Demokratischer Scldatem Osterreicho and Gubi v Austria, (Application No. 15153/89), Series A, No 302, (1995), 20 EHRR 56 at Para 37

⁴ Nilsen and Johnsen v Norway, (Application No. 23118/93), 25 November 1999 [GC], ECHR 1999-VIII at para 43

⁵ Glasenapp v Germany (Application No. 9228/80), Series A, No. 104, 28 August 1986, (1987) 9 E.H.R.R. 25