RACE ATTACKS

Do we need new legislation?

While there has been a great deal of discussion recently about racial attacks and harassment, there has been relatively little action. The publication of the Home Office report entitled Racial Attacks (1981) and the establishment of the Inter-Departmental Government working party - The Racial Attacks Group (RAG) - in 1987, and its subsequent report - Racial Harassment and Attacks: Guidance for Statutory Agencies (1989) - signalled a formal change in official attitudes on this issue.

It is well documented that the problem of racial attacks is not merely a recent phenomenon. Nevertheless, in recent years, the number of reported racial incidents recorded by Police forces in England and Wales has risen dramatically - from 4407 in 1988 to over 8700 in 1993, while the British Crime Survey estimated that there were over 130,000 incidents of racial victimisation against Asians and Afro-Caribbeans in 1992.

Calls for reform

It is within this climate that renewed calls have been voiced most notably from the Commission for Racial Equality and the Anti-Racist Alliance, and more recently in The Labour Party's documents - Racial Attacks - Time to Act (1993) and The Rising Tide (1994) - for a Racial Harassment Bill which would, it is argued 'widen and strengthen the existing legislative framework ... [and] ... would require the prosecuting authority, in relation to offences of violence, to place before the court any evidence which showed that the offences had been committed on racial grounds'. The arguments for reform centre around the inadequate use of existing legislation, such as the racial hatred provision of the Public Order Act (1986) sections 5 and 17-23; the offences against the Person Act (1861) and section 3(1) of the Football Offences Act (1991). For example, it is argued that although there has been an increase in the number of prosecutions under the various sections of the Public Order Act - from 4 in 1986 to 67 in 1991 - only 17 convictions have been recorded since 1987.

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However despite limited prosecutions and convictions under existing legislation, such figures do not in themselves provide evidence for further formal legislative reform, nor does the suggestion that '... the specific criminalisation of racial violence is as important for its symbolic value as for its actual use in prosecutions' (Labour Party 1993). Rather, what the evidence does highlight is the overall paucity of political discussion on tackling racial attacks and the absence of any realistic assessment of existing legal and extra legal provision. The Conservatives have rejected the creation of new legislation, arguing that there are already ample laws to deal with racial hatred. There is a semblance of truth in this point, although as highlighted above, it is obviously the case that existing legislation is not working as effectively as it could.

Race and politics

Calls for more legislation from organisations such as the Labour party fits uneasily with their promise of being 'tough on crime and tough on the causes of crime'. The introduction of racial harassment legislation will neither root out the causes of crime nor 'send positive signals of support to minority ethnic communities throughout Britain'. Moreover there is no evidence to support Labour's claim that further legislation would 'encourage a welcome realism in the levels of reporting of racial attacks, and could act as a deterrent to possible attackers', nor that it will increase the levels of prosecutions and convictions. As Conservatives argue, existing provision does provide numerous avenues for action. However, the problems associated with existing legislation are concerned less with its coverage of racially motivated behaviour, and more with its effective implementation (or lack of) by agencies such as the police and Crown Prosecution Service. Coupled to this point is the perception by many victims and perpetrators alike that the police and other agencies do not take the problem of racially motivated incidents seriously.

Thus what the discussions have failed to deliver is an imaginative assessment and monitoring of existing legal responses, and a realistic analysis of the role of all agencies involved in the process of tackling racial attacks, and of their commitment and effectiveness. Despite specific recommendations in the RAG report outlining in detail advice on the development of a multi-agency approach to racial harassment and attacks, debate has continued to focus on the need for more legislation and the role of the police service.

However the police service is only one of many agencies involved in tackling racial harassment, and may not be the most effective agency to intervene in all cases. Local Authorities also play an important role in tackling racial harassment, in assisting the victims and dealing with the perpetrators. Moreover, evidence suggests that in some areas, victims perceive the Local Authority to take racial harassment more seriously than other agencies such as the police.

The role of the local authorities

Local Authorities generally are empowered under the Race Relations Act of 1976 to eliminate unlawful discrimination and to promote equality of opportunity and good race relations between persons of different racial groups. The variety of powers available to local authorities make them a central agency in tackling racial harassment. Specifically they have a distinct role in tackling racial harassment in respect of housing, education and social services.

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Again the present inadequacies and difficulties in implementing many of these measures nationally does not eliminate their possible and actual advantages. For example, despite the use of injunctions being dependent upon the ability to show clear breach of tenancy agreements, thus making it imperative that tenancy conditions are drafted to catch a wide range of racist behaviour, such powers offer immediate implementation and action. The London Borough of Southwark's housing department - the winners of the first Local Authority Race Award - recently made two successful high court applications for injunctions against alleged perpetrators of racial harassment. In one case, the injunction banned the perpetrator from returning to his home, and the other stopped a group of 10 racist youths gathering in specified areas.

A further area where realistic responses to racial harassment can be seen is in the development of extra-legal provision across the country. While many programmes are still in their infancy, and others lack clear evaluation and monitoring procedures, such activities do highlight scope for more effective policies and practices. Sampson and Phillips (1993) in a recent review of such measures group such national developments and initiatives under four main headings: Measures to facilitate immediate report -

such as 24 hour emergency hotlines; community developments; deterrent measures such as targeted policing; and victim support and advocacy measures such as the introduction of advice centres providing support and counselling.

The effect of racial harassment and attacks on the individual and broader community can not be underestimated. However, what is questionable are the most effective measures of intervention, at what level, by whom and through what method. Many on the political left have proposed further punitive and mechanistic legislation and powers to the police in order to 'help justice to be served, help protect the rights of black people and those subject to racial attacks and harassment and reflect society's abhorrence at racial violence' (ARA 1993:5). Yet as has been suggested the present problems are less about existing provisions, than about their interpretation and use, coupled to the commitment in practice of agencies to take racial violence and abuse seriously. Further legislation will suffer the same problems existing legislation has encountered, and may not even provide symbolic importance. Rather what is needed is a genuine commitment from Government and existing agencies to an imaginative use of existing powers, coupled with the continuing development, monitoring and evaluation of extra-legal provision.

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References

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A Black Lawyer's Perspective

Criminal practitioners in the Criminal Justice sub-committee of the Society of Black Lawyers, have conducted a serious debate on this issue. What follows reflects this collective debate, and in particular our Policy Statement on Remedies for Racially Motivated Crimes.

1. In general

i) We believe that the present methods of investigation, prosecution and disposal by the courts of those responsible for racially motivated offences are inadequate.

ii) We do not believe that the sentences of those convicted of such offences reflect the additional seriousness that racial motivation adds to the commission of an offence.

iii) We believe that the courts have failed to have proper regard to the particular harm that offences cause to black people, and to society as a whole.

iv) We are united with all those who share this view and wish to influence the police, the prosecutors and the courts to rectify this.

2. We are against the creation of a new offence as:

i) The courts are already empowered to take into account the serious nature of a racial motivation behind an offence on an overall view of the facts, and aggravate a sentence accordingly.

ii) The present failure to impose deterrent sentences can and must be rectified by practice directions from the Lord Chief Justice to judges and magistrates, just as has been done in cases like rape.

iii) The creation of an additional element of mens rea relating to racial motivation that requires proof beyond reasonable doubt would be a positive impediment to the conviction of racists.

iv) If the tribunal of fact did not find the additional offence proved to the criminal standard the sentencing tribunal would be denied from taking it into consideration.

v) It would be for the Crown Prosecution Service (CPS) to make the additional charge. Therefore consideration of the 'racial nature' of the offence would be taken out of the hands of the sentencing tribunal, and put in the hands of the CPS who are privy only to reports prepared by the police before the case comes to court.

vi) A failure by the CPS to proceed with the additional offence, would have to be construed by the court as an admission that it did not form part of their case.

vii) The very argument for the creation of a new offence, provides an excuse for the police, CPS and the courts for their failures to do their duty, under the existing criminal law which provides sufficient powers.

viii) A new offence may be used against black defendants accused of crimes against white people, or against those campaigning on issues of race in 'Public Order' situations.

3. Conclusions

We understand the philosophical arguments in favour of a new criminal offence, but do not believe that they justify the practical dangers inherent in seeking to rely on such an offence to overcome the present failings. Furthermore, a new offence and the possible advantages it may bring are academic if enforcement is placed in the hands of organisations who were hitherto distinguished by their failure to act in the interests of black people.

We believe that our main objective must be to ensure justice for black people, whether accused of crimes or as victims of crime. To this extent we believe that we must ensure greater sentences for those convicted of racially motivated crimes against black people, without unnecessarily putting potential black defendants at risk. We believe that the threat that black people face from racial violence is heightened not by lack of legal protection, but by lack of enforcement of that protection at all levels. It is the problem of enforcement, to which we believe our energy should be addressed.

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