



LORD CHIEF JUSTICE
OF ENGLAND AND WALES

SPEECH BY LORD PHILLIPS, LORD CHIEF JUSTICE

EQUALITY BEFORE THE LAW

EAST LONDON MUSLIM CENTRE

3RD JULY 2008

In 1903 two young immigrants arrived in England. They were Sephardic Jews and had eloped to this country from Alexandria because they understood that England was a country in which they would enjoy freedom. Not merely freedom from their families, who did not approve of their marriage, but freedom under the law from all forms of discrimination. They believed that England was a country where all were treated equally, regardless of their colour, race, religion or gender. They were my maternal grandparents, and to a large extent they were correct. England was a country that prided itself on the freedom accorded to those who lived here. But, as we shall see, this very freedom permitted some who lived here to discriminate in the way that they treated others. It is only in my own lifetime that the law has moved to outlaw almost every form of discrimination, so that those who live in this country really are entitled to be treated as equals.

I propose to explain to you the ways in which the law has changed, with the result that Muslim men and Muslim women are entitled to be treated in exactly the same way as all other men and women in this country. And there is, of course, another side to this coin. Rights carry with them obligations, and those who come to live in this country and to benefit from the rights enjoyed by all who live here, also necessarily come under the same obligations that the law imposes on all who live here. The title of my talk is 'equality before the law', and it may be helpful to consider at the outset what 'the law' is. The law that I am to talk about is the set of rules that govern how we live in society. They are rules made by those with authority to make them and rules that are enforced by those with authority to enforce them.

In some countries those who make the law are the same as those who enforce it. In this country that is not the case. We have what is known as the separation of powers. Parliament makes our laws. The government administers the country in accordance with those laws and, if anyone alleges that an individual or a government authority has broken the law, it is the judges who have to determine whether the law has been broken or not and, if it has, to rule on what sanction or remedy is to be imposed.

The judges of this country are independently appointed. We are fiercely proud of our independence. When we are appointed we take an oath or affirmation that we will administer justice 'to do right to all manner of people after the laws and

usages of this realm'. We act in accordance with that oath. We treat equally all who come before us, regardless of whether they are men or women, regardless of their race or religion and whether they are rich or poor.

We are not influenced by the wishes of the government, and no Government Minister would dare to attempt to influence a judge to decide a case in a particular way. Each individual judge is independent, which means that I as Lord Chief Justice would not think of directing another judge how to decide a case.

So I can give you this assurance. Any man or woman who appears before a judge in this country will receive equal treatment in the administration of the law. The judge will treat each litigant in the same way. But the judge's duty is to apply the law, whether he agrees with the law or not. So the important question is not 'does the judge treat everyone equally?' but 'does the law treat everyone equally?' In any society the answer to that question depends upon the motives, the beliefs, the attitudes, the prejudices or lack of prejudices of those who make the law.

At this point, you will forgive me I hope, as I must say a little about history, for our law today is, to some extent, a product of this country's history. Before this country became a democracy, those responsible for the laws were not very enthusiastic about equality. There is a popular perception that the freedoms that we all enjoy had their root in the Magna Carta. That is a misconception. Before the Magna Carta England had a feudal system, in which the King was supreme. Below the King came the noblemen and below the noblemen the serfs. The law imposed by the King was imposed for his own benefit and made very substantial demands on his noblemen, who themselves made exacting demands on their serfs. The King's rights included, by way of example, the right to dictate to whom the widow of a nobleman should be re-married. Ultimately the nobles revolted against the demands made on them and the Magna Carta set out an agreement made by King John in 1215 that he would moderate those demands. Thus Chapter 8 of the Charter provided 'no widow shall be forced to marry so long as she wishes to live without a husband'.

It is not for provisions such as these that the Magna Carta is remembered, but for the following pledges:

"No freeman shall be arrested or imprisoned or disseised or outlawed or exiled or in any way victimised, neither will we attack him or send anyone to attack him, except by the lawful judgment of his peers or by the law of the land. To no-one will we refuse or delay right or justice".

This came to be regarded as setting out the fundamental rights of British citizens. King John subsequently renounced the agreement that he had made in Magna Carta, but later Kings agreed to abide by an amended version and so this became an important part of the law. Magna Carta dealt with relations between the subject and the State, in the form of the monarch. Other laws dealt with disputes between the King's subjects. How were these laws created? Initially they were created by judges, appointed by the King to act on his behalf in resolving those disputes. The law created by the judges came to be called the 'common law'. The common law covered aspects of life common to most societies – the right to own property, rules in relation to inheritance, the right to compensation if one person injured another and so on. These are aspects of what we call civil law; the law governing the reciprocal rights and duties of citizens towards each other. But the judges created another kind of common law – the law that we call criminal law. This law exists not for the benefit of the individual citizen, but for the benefit of

society as a whole, and it lays down acts that are prohibited because they are anti-social. Those who break those laws commit crimes against the state and are liable to be punished by the state. In the old days we used to talk about crimes as being a 'breach of the king's peace'. Examples of acts that have always been recognised as crimes are murder, rape, assault and theft.

The common law still exists and, indeed, it is the foundation of the law that is applied today. But it has been largely replaced by statute law, that is law enacted by Parliament, and that is the usual way that laws are made in a democracy. The supremacy of Parliament dates back to 1689 when King William III signed the Bill of Rights this provided for free elections and freedom of speech in Parliament and removed the power of the King to suspend the laws which Parliament had passed. Under the parliamentary system the people elect representatives who then make the laws that govern the people.

I said earlier that laws tend to reflect the motives, beliefs, attitudes and prejudices of those who make the law. Parliament tends to enact legislation that reflects the attitudes and wishes of the majority of the electorate. If everyone has the right to vote that is a fact that tends towards laws which apply equally to everyone. But for a very long time not every citizen of this country had the right to vote. Men tended to dominate society and to consider that they were more important and superior to women. When parliamentary democracy was introduced to this country, it was a very biased democracy, because only men were allowed to vote and only men were allowed to become members of Parliament. So it is perhaps not surprising that the laws passed by Parliament tended to discriminate in favour of men.

Slowly there was a change in attitude, a change that was partly brought about by protests of the women themselves. In 1918 Parliament voted for a limited right to vote for women and permitted those eligible to vote to become Members of Parliament. In 1928 women gained the right to vote to the same extent as men. Thereafter, so far as relations between the citizen and the State were concerned, women came to be treated equally with men.

There were other respects in which prejudices on the part of those who made the laws resulted in inequality of treatment of citizens of this country. This was certainly true of religion. Historically Christianity has been the religion of the majority of the British people, but the United Kingdom has a long tradition of accommodating other religions. This has not always been the case however. Jews came to this country with William the Conqueror in 1066. But in 1290 all Jews were expelled from Britain by the Edict of Expulsion proclaimed by King Edward I. They were allowed back in 1656 by Oliver Cromwell and have since then been a valued element of our society. Paradoxically at that time we had a much less charitable attitude to some members of the Christian faith. The history of the Christian religion has been marred by schism and, in particular by strife between the Protestant and the Roman Catholic branches of the faith.

King Henry VIII broke with the Catholic Church in 1534 and after that, with one or two very short exceptions, Protestant Christianity has been the official religion of this country. In 1700 an Act of Parliament provided that the sovereign had to be a member of the Church of England and that remains the position to this day. Laws were passed that discriminated severely against Catholics, so that they were prevented from owning property, inheriting land, joining the army, holding public office or voting. It was only at the end of the 18th Century and the

beginning of the 19th Century that a series of Acts of Parliament ere passed removing all these disqualifications.

I have so far been concentrating on the negative side of our history; areas where our laws have positively discriminated on grounds of race, religion or gender. In general, however, the approach of our law has been that of liberty. As Sir John Donaldson, one of my distinguished judicial predecessors, put it in this way:

“The starting point of our domestic law is that every citizen has a right to do what he likes, unless restrained by the common law or by statute”.^[1]

That statement today is true not merely of British citizens but of anyone who is lawfully within this country. Personal liberty is a right to which the courts of this country have long attached the highest importance. Anyone who is deprived of his liberty, whether by the state or by anybody else, can bring proceedings in the courts to challenge the legality of his detention. One way that he can do so is by the writ of habeas corpus, a remedy that has existed since the 17th Century. A famous example of this remedy was *Somerset’s Case* in 1772. A Mr Stewart had purchased an African slave called Somerset in Jamaica and had brought him on a visit to England, not bringing him ashore but keeping him detained in the ship which was to take them both back to Jamaica. A gentleman called Granville Sharpe, who was vehemently opposed to slavery brought habeas corpus proceedings before the English court claiming that Somerset was being unlawfully detained. His claim succeeded and Lord Mansfield ordered that Somerset should be released. This set a precedent and led the Lord Chancellor to say in a subsequent similar case “As soon as a man sets foot on English ground he is free”.^[2]

But freedom of individuals from State interference can itself lead to unequal treatment in the way that those individuals behave towards each other. Life in a modern society involves the interdependence of those who live and work together. There is scope for discrimination in many areas if the law does not place restraints on the way people may behave. I have already described how women were not given the vote until 1918. But this was not the only way that a male dominated society tended to discriminate against them. The first university college for women was not opened until 1869. By 1910 there were over a thousand women students at Oxford and Cambridge, but they still had to obtain permission to attend lectures and were not allowed to take a degree. It was not until 1918 that the first woman became entitled to qualify as a barrister, and the first woman solicitor was not admitted until 1922. Until more recently employers were permitted to refuse to employ women, or to offer women employment on less generous terms than male employees.

It is only in my lifetime that Parliament has legislated to stamp out discrimination in all areas and aspects of society. The catalyst for change was perhaps the horrifying racism of the Nazi regime in Germany before and during the Second World War. This led in 1948 to the Universal Declaration of Human Rights, which included the following statement:

^[1] A-G v Observer td [1960] 1 AC 109.

^[2] *Shanley v Harvey* 2 Eden 126 (1762)

“recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”.

More significantly, the United Kingdom helped to draft and, in 1951, signed the European Convention on Human Rights. This required all the signatories to ensure that there was no unlawful interference with the fundamental human rights set out in the treaty. Furthermore Article 14 of the Convention provided:

“The enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

The requirement to ensure equal treatment applies in respect of the fundamental human rights protected by the Convention. In 1998 the Human Rights Act was passed which requires all public authorities to comply with the Convention, so that individuals now have a legal right to compensation if they are subject to discrimination by agents of the government in relation to their fundamental human rights.

In 1976 the United Kingdom ratified a Convention that imposes a general obligation to prohibit civil and political discrimination. Article 26 of the International Covenant Rights provides:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

I propose to outline some of the laws that Parliament has passed to ensure that people in this country receive equality of treatment. I say some of them, because in 2000 it was calculated that there were no less than 30 Acts of Parliament, not to mention statutory Regulations and Codes of Practice, dealing with discrimination.

The prohibition against racial discrimination is a good place to start. There has been legislation prohibiting discrimination on the grounds of race for over 40 years, but the most important statute is the Race Relations Act 1976. This prohibits anyone from treating a person less favourably on the grounds of race; that means on the grounds of ‘colour, race, nationality or ethnic or national origins’. No longer could a landlady hang a sign in her window saying ‘Bed and Breakfast. No blacks or Irish’.

Perhaps the most significant area where the prohibition against discrimination matters is in relation to employment. People cannot be refused employment on the ground of their race. There has been quite a lot of litigation, however, as to what constitutes a racial group for the purposes of the Act. Jews, Sikhs and gypsies have all been held to be protected by the legislation. In 1976 the House of Lords ruled that it had been unlawful for a school to exclude a Sikh boy on the ground that he refused to cut his hair.^[3] The House of Lords held that Sikhs were

^[3] Mandla v Dowell [1983] AC 548

historically descended from a recognised group and thus qualified as a racial group.

That case can be contrasted with a decision of the Court of Appeal ten years later. A Rastafarian had been refused a job as a van driver because he refused to cut his hair. The court held that Rastafarians did not constitute a racial group^[4].

Muslims have been held not to fall within the definition of a racial group. In a decision in 1998 The Employment Appeal Tribunal observed that “Muslims include people of many nations and colours who speak many languages and whose common denominator is religion and religious culture”^[5]. Thus they form a group defined by religion rather than race. I shall refer to legislation that prohibits discrimination on the ground of religion in a moment. First, however, I would like to deal with discrimination on the ground of gender.

The Sex Discrimination Act 1975 forbids discrimination against women and provides that a person discriminates against a woman if he treats her less favourably than he treats or would treat a man. Once again the most important area where this applies is probably the field of employment, but the prohibition is of general application. I remember a famous case when I was practising at the Bar where a woman brought proceedings against a well known wine bar frequented by barristers and journalists in Fleet Street called El Vino. They had a strict rule that only men were allowed to drink standing at the bar – women would only be served if they were sitting at a table. This rule was supposed to be out of consideration for women, but the court held that it constituted wrongful discrimination. This may not seem to be a case where the right involved was of great importance, and it is a fact that many of the cases brought to court have not involved the most serious forms of discrimination, being concerned with dress, or length of hair.

I now want to consider the protection that the law provides against discrimination that can be of great significance; discrimination on the ground of a person’s religion.

Article 9 of the Human Rights Convention provides:

“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private life, to manifest his religion or belief, in worship, teaching, practice or observation.”

This human right is one that, as I have already said, this country has long recognised. In this country everyone is free to follow their own religion. The different Christian denominations can build their own churches, Jews can build synagogues, Hindus can build temples and Muslims can build mosques, of which the mosque here is a magnificent example, and each of these is free to practise his own faith in his own way.

There is another fundamental human right that is relevant in this context, and that is freedom of speech. Article 10 of the Human Rights Convention provides:

^[4] *Crown Suppliers v Dawkins* [1993] ICR 517

^[5] *Nyazi v Ryman* (10 May 1998 – unreported)

'Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference.

Freedom of speech has long been prized and protected in this country. Any person is free to preach the merits of his own religion, and freedom of religion includes the right to change one's faith, or apostasy.

These religious freedoms of which I have been speaking relate to the relations between those practising a religion and the State. Many States are less ready than the United Kingdom to permit the practice and preaching of religions other than that officially recognised by the State. But, just as in other fields, it is possible for one citizen to discriminate against another on the grounds of a person's religion or belief. Until recently there was no law in this country that prohibited such discrimination. European Law was ahead of English law, and it was in order to give effect to a European Directive that, in 2003, Regulations were introduced that prohibited discrimination in the field of employment on the ground of a person's religion or belief ^[6]. In 2006 the Equality Act extended the prohibition against discrimination on the ground of religion or belief to cover other areas such as the provision of goods, facilities and services, the letting of premises and the provision of education.

Let me try to summarise the position. British law has, comparatively recently, reached a stage of development in which a high premium is placed not merely on liberty, but on equality of all who live in this country. That law is secular. It does not attempt to enforce the standards of behaviour that the Christian religion or any other religion expects. It is perhaps founded on one ethical principle that the Christian religion shares with most, if not all, other religions and that is that one should love one's neighbour. And so the law sets out to prevent behaviour that harms others. Behaviour that is contrary to religious principles, but which is detrimental only to those who commit it, is not, in general, contrary to our law. A sin is not necessarily a crime.

Those who come to live in this country must take its laws as they find them. British diversity is valued and the principles of freedom and equality that the law protects should be welcomed by all. Laws in this country are based on the common values of tolerance, openness, equality and respect for the rule of law. Whilst breaches of the requirements of any religion in the U.K. may not be punished by the law, people are free to practise their religion. That is something to be valued.

I said that the law sets out to prevent behaviour that harms others. In a modern society there are many ways in which the behaviour of some can harm others, and there have been passed thousands of laws and regulations that are designed to try to prevent such behaviour. These laws and regulations can run into conflict with the freedoms that I have been discussing. The law can sometimes, quite unintentionally, have an adverse impact on a particular minority. Where this happens we will sometimes be able to make exceptions in order to prevent this. Let me give you two examples. Regulations require special headgear to be worn in a number of different situations. Advocates are expected to wear wigs, policemen to wear helmets, servicemen to wear caps, construction workers to wear safety helmets. These regulations would have a discriminatory effect on Sikhs, who could not comply with them because they do not cut their hair but encase it in the

^[6] The Employment and Equality (Religion or Belief) Regulations 2003.

turban, and so Sikhs have been given an exemption from complying with these requirements.

Principles of Sharia prohibit the earning or paying of interest. This means that a conventional mortgage offends the principles of Islam. The banks managed to devise an alternative system of financing house purchases that did not offend Sharia principles. This involved the bank itself buying the house and then reselling it to the Muslim purchaser. There was one problem with this. English taxation law charges stamp duty on a house purchase and under this system of mortgage stamp duty had to be paid twice, once on the sale to the bank and again on the resale to the purchaser. This was not fair and so the law was changed in April 2003 so that stamp duty only had to be paid once on an Islamic mortgage.

This example brings me onto the topic of Sharia law. It is not a topic on which I can claim any special expertise, but I have been reading quite a lot about it in preparation for this talk. I have also recently been on a visit to Oman and discussed with lawyers there the manner of the application of Sharia law in that country. It has become clear to me that there is widespread misunderstanding in this country as to the nature of Sharia law. Sharia consists of a set of principles governing the way that one should live one's life in accordance with the will of God. These principles are based on the Qu'ran, as revealed to the Prophet Muhammad and interpreted by Islamic scholars. The principles have much in common with those of other religions. They do not include forced marriage or the repression of women. Compliance with them requires a high level of personal conduct, including abstinence from alcohol. I understand that it is not the case that for a Muslim to lead his or her life in accordance with these principles will be in conflict with the requirements of the law in this country

What would be in conflict with the law would be to impose certain sanctions for failure to comply with Sharia principles. Part of the misconception about Sharia law is the belief that Sharia is only about mandating sanctions such as flogging, stoning, the cutting off of hands, or death for those who fail to comply with the law. And the view of many of Sharia law is coloured by violent extremists who invoke it, perversely, to justify terrorist atrocities such as suicide bombing, which I understand to be in conflict with Islamic principles. There can be no question of such sanctions being applied to or by any Muslim who lives within this jurisdiction. Nor, when I was in Oman, did I find that such penalties formed any part of the law applied there. It is true that they have the death penalty for that intentional murder, but they do not apply any of the other forms of corporal punishment I have just listed.

It remains the fact that in Muslim countries where the law is founded on Sharia principles, the law includes sanctions for failure to observe those principles and there are courts to try those who are alleged to have breached those laws. The definition of the law and the sanctions to be applied for breach of it differ from one Muslim country to another. In some countries the courts interpret Sharia Law as calling for severe physical punishment. There can be no question of such courts sitting in this country, or such sanctions being applied here. So far as the law is concerned, those who live in this country are governed by English law and subject to the jurisdiction of the English courts.

In February this year I chaired a lecture given by the Archbishop of Canterbury in the Royal Courts of Justice on the topic of Civil and Religious Law in England. It was a profound lecture and one not readily understood on a single listening. It was, I believe, not clearly understood by all, and certainly not by sections of the

media which represented the Archbishop as suggesting the possibility that Muslims in this country might be governed by their own system of Sharia law. That is certainly not what he was suggesting. On the contrary he made it plain that there could not be some subsidiary Sharia jurisdiction which, I quote, “could have the power to deny access to rights granted to other citizens or to punish its members for claiming those rights”. Speaking more specifically of apostasy he said “In a society where freedom of religion is secured by law, it is obviously impossible for any group to claim that conversion to another faith is simply disallowed or to claim the right to inflict punishment on a convert”.

A point that the Archbishop was making was that it was possible for individuals voluntarily to conduct their lives in accordance with Sharia principles without this being in conflict with the rights guaranteed by our law. To quote him again “the refusal of a religious believer to act upon the legal recognition of a right is not, given the plural character of society, a denial to anyone inside or outside the community of access to that right”.

The Archbishop went on to suggest that it might be possible to contemplate, and again I quote, “a scheme in which individuals retain the liberty to choose the jurisdiction under which they will seek to resolve certain carefully specified matters”. He suggested by way of example “aspects of marital law, the regulation of financial transactions and authorised structures of mediation and conflict resolution”.

It was not very radical to advocate embracing Sharia Law in the context of family disputes, for example, and our system already goes a long way towards accommodating the Archbishop’s suggestion. It is possible in this country for those who are entering into a contractual agreement to agree that the agreement shall be governed by a law other than English law. Those who, in this country, are in dispute as to their respective rights are free to subject that dispute to the mediation of a chosen person, or to agree that the dispute shall be resolved by a chosen arbitrator or arbitrators. There is no reason why principles of Sharia Law, or any other religious code should not be the basis for mediation or other forms of alternative dispute resolution. It must be recognised, however, that any sanctions for a failure to comply with the agreed terms of the mediation would be drawn from the laws of England and Wales. So far as aspects of matrimonial law are concerned, there is a limited precedent for English law to recognise aspects of religious laws, although when it comes to divorce this can only be effected in accordance with the civil law of this country.

Those who provide financial services in this country are subject to regulation in order to protect their customers and that regulation accommodates financial institutions or products that comply with Sharia principles. There are three Islamic banks authorised by the Financial Services Authority to carry on business in the United Kingdom. A number of Sukuk issues have been listed on the London Stock Exchange. In May this year Europe’s first Islamic insurance company or “takaful” provider was authorised by the Financial Services Authority. Speaking earlier this year, Kitty Ussher, the Economics Secretary said

“We want to make sure that no-one has their choice of financial services limited by their religion, and to help ensure that Muslims have the same access to financial services as anyone else in Britain.”

Having heard what I have had to say this evening, some of you may be thinking ‘this equality in law is all very well, but some of those in authority with whom we

come into contact do not treat us as equals and, anyway, how can we be expected to know our legal rights when we are not lawyers?’ As to the first point I am well aware that Muslims sometimes feel that they are being unfairly singled out simply because a small minority, who purport to share their religion, have ignored its teachings by turning to a violent extremism that is a threat to society. There are I know here this evening some whose job it is to enforce the law and to them I would say this. It is not enough that all in this country are entitled by law to equal treatment. It is up to you to make sure that you, and those for whom you are responsible, treat every man and woman on equal footing, entitled to the same personal dignity and respect.

As to the problem of knowing what your rights are, that is a problem shared by most citizens who are not in a position to pay for legal advice. Happily here the London Muslim Centre has supported the provision of a ‘pro bono’ legal advice service, that is, the provision without charge by volunteers of legal advice and representation to Muslim and non-Muslim alike. I strongly commend that service and those who generously provide it.

There are now about 1.6 million Muslims living in this country. They form a vital and valued element of British Society. They are well represented by a variety of groups and individuals, including the Muslim Council of Britain, whose aims include the fostering of better community relations and working for the good of society as a whole. That aim is undoubtedly promoted by this impressive Centre, whose buildings appropriately embrace one of the East End’s oldest synagogues, fostering Jewish-Muslim relations which have been described as the best in the country. I know that this centre does much to encourage inter-faith relations and community cohesion – one of its stated aims. It has – as I said at the beginning - been a privilege to have been invited to talk to you here today.

If I may summarise the message that I have sought to give, the courts of this country offer the same justice to all who come before them, regardless of gender, race or creed. The point is sometimes made that this is not easy to accept when the judiciary is not representative of those whom they are judging. Judges are now appointed by an independent appointment Commission and they are appointed on merit. The Equal Treatment Advisory Committee, whose members represent all parts of the legal profession, is working hard to assist judges in recognising the role of social and cultural differences in the determination of cases before them. There has, however, been a dearth of applicants from the ethnic minorities for appointment to the bench. Both the Appointments Commission and the judiciary are concerned about this. I have no doubt that there are, in the Muslim community, many men and women alike who would make outstanding lawyers and outstanding judges. It is important that they should recognise that they have a valuable potential role to play as judges, administering the law of this country to all who come before them, without fear or favour affection or ill-will.

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