

Misogyny as a Hate Crime.

Nottingham police are treating misogyny as a hate crime: ‘The force defines misogyny hate crime as “incidents against women that are motivated by an attitude of a man towards a woman and includes behaviour targeted towards a woman by men simply because they are a woman”’ (The Guardian 10 Sept 2016). The issue raised at the All Party Parliamentary Group (APPG) on Domestic Violence in March 2017 was whether this could be rolled out nationwide or whether the term misogyny would have to be replaced by ‘gender based’ hate crime. In my view a case could be made for retaining the term misogyny – but it may be contested.

The problem has been identified as the Equality Act 2010 and whether it is legitimate to treat men and women differently. The Equality Act is not necessarily a bar to treating misogyny as a hate crime because it is aimed at dealing with a different mischief/issue.

The Law

In relation to several offences specified in the Crime and Disorder Act 1998, if the defendant, in committing such an offence, demonstrates, or was motivated by, hostility on the grounds of race or religion, that offence becomes an “aggravated” offence. (s28-32). Under the Public Order Act 1986, the criminal law prohibits the stirring up of hatred on grounds of race, religion or sexual orientation. In addition, under sections 145 and 146 of the Criminal Justice Act 2003, stricter sentences can be imposed if an offender demonstrated or was motivated by hostility based on race, religion, disability, sexual orientation or transgender .

The Equality Act 2010 provides protection from unlawful discrimination on the basis of race, religion, sex, disability, age, gender reassignment, sexual orientation and pregnancy and maternity.

Discrimination is defined in the Guidance as follows: An individual or organisation that provides services to the public must not treat someone worse just because of one or more protected characteristics (this is called direct discrimination) (Equality Act 2010: Summary Guidance on Services, Public Functions and Associations p7)

The potential problem is that if misogyny, and not misandry, is treated as a hate crime, this could be seen as treating men ‘worse’ on the basis of their sex.

Hate crime motivated by hostility on the basis of sex is not an aggravated offence. Nor is it monitored nationally.

Monitored Hate Crime

An overview of hate crime records:

In 2007, the Police Service, Crown Prosecution Service (CPS), Prison Service (now the National Offender Management Service) and other agencies that make up the criminal justice system agreed a common definition of ‘hate crime’ and five ‘strands’ that would be monitored centrally. Hate crime is defined as ‘any criminal offence which is perceived, by the victim or any other

person, to be motivated by a hostility or prejudice towards someone based on a personal characteristic.’ (Home Office, ONS and Ministry of Justice (2013) An Overview of Hate Crime in England and Wales p11).

The five strands are race, religion, sexual orientation, disability and gender identity. The overview states: Crimes based on hostility to age, gender, or appearance, for example, can also be hate crimes, although they are not part of the five centrally monitored strands (p11).

The College of Policing advice is:

1.3 Agencies and partnerships are free to extend their own policy response to include the hostilities that they believe are prevalent in their area or that are causing the greatest concern to the community. Telling a victim that a crime is not a hate crime could be deeply offensive to them. This is particularly the case when the circumstances fit the first part of the common definition: ‘Any crime or incident where the perpetrator’s hostility or prejudice against an identifiable group of people is a factor in determining who is victimised’.

1.3.3 Trends in non-monitored hate crime

If a partnership detects a trend, or a community reports concerns about a non-monitored hate crime, this should be considered and appropriate action taken such as:

- including it in local policy and applying the same type of response as to other hate crimes
- seeking more information on the extent of the hostility
- community engagement activity
- media strategies
- problem solving approaches with education services or other stakeholders
- including it in the threat assessment process within the National Intelligence Model (NIM)

(College of Policing (2014) Hate Crime Operational Guidance)

It is clear therefore that it is open to police forces to take action in relation to hate crime against women, even if it is not currently monitored.

The Equality Act 2010 and misogyny

The Law Commission consulted on (Law Commission Consultation Paper No 213 (2013) Hate Crime: The Case for Extending the Existing Offences) and reported on proposals to extend the range of offences treated as hate crime to include disability, sexual orientation and transgender. It discussed the question of inclusive definitions of protected categories which can be used in supporting an argument in favour of designating misogyny a hate crime.

The Law Commission observed that the definitions of racial group and religious group could be interpreted neutrally to include e.g white people, foreigners and non-believers (para 3.79). While the aggravated offences ‘were enacted primarily in order to address the denial of equal respect and dignity to minorities and people who are generally seen as “other”, they have also been held to apply in a neutral way. It is as much an offence to demonstrate racial hostility against someone who is white as against someone who is black’. This had the advantage that the ‘all-encompassing

definition' would protect 'all members of society equally'. However, the Law Commission conceded that the same neutral approach could not be adopted in relation to disability and transgender identity (3.80):

Of the several possible definitions of disability and transgender identity we set out below, even the broadest would exclude able-bodied people and people who fall within typical gender norms or those who identify as the gender they were assigned at birth.

It went on to say that having broad definitions could have the effect of increasing judicial discretion and creating 'uncertainty, inconsistencies and an overall lack of coherence' (3.81).

The Law Commission goes on to discuss the differences between legislation relating to hate crime and the Equality Act:

3.93 ..One of the key rationales of the Equality Act 2010 was to create equal treatment in a number of contexts, including access to employment, services and education....

.Although one of the underlying purposes of hate crime legislation is to tackle hostility-driven offending which has the effect of undermining the equality and dignity of disabled people, we consider that the Equality Act has a different, broader focus on equal treatment.' The Equality Act was therefore not appropriate in this context. The purpose of hate crime law was to combat crimes that deny 'equal respect and dignity to people who are seen as "other".... The effect of this denial is to undermine the ability of targeted people to feel safe and secure in society because of their [difference]'

The purpose of hate crime law was described in Rogers [2007] UKHL 8, [2007] 2 AC 62 at [12].

The mischief attacked by the aggravated versions of these offences are racism and xenophobia. Their essence is the denial of equal respect and dignity to people who are seen as "other". This is more deeply hurtful, damaging and disrespectful to the victims than the simple version of these offences. It is also more damaging to the community as a whole, by denying acceptance to members of certain groups not for their own sake but for the sake of something they can do nothing about. This is just as true if the group is defined exclusively as it is if it is defined inclusively.

The Equality Act itself provides for different treatment in some cases. 'An organisation is allowed to provide single-sex services (services just for men or just for women) where this is objectively justified and...only men or only women require the service (Equality Act 2010: Summary Guidance on Services, Public Functions and Associations p21).

The argument would be that the purpose of hate crime laws and policing is very different from the mischief that the Equality Act was intended to address; hate crime policing is meant to make people feel safe and to combat actions that deny them dignity and equal respect. The Equality Act is meant to deal with access to employment and services.

In addition, the police are already monitoring hate crime based on disability, which, as the Law Commission pointed out, means that people without a disability are excluded, as are, probably those who are not transgender.

There is an objective reason for treating men and women differently as it is women who suffer hostility or prejudice because they are women. Men do not suffer hostility or prejudice because they are men.

It is open to Parliament to legislate to extend aggravated offence status to misogyny hate crime but this seems unlikely at present. The Law Commission called for a complete review of the law as it is not working well. As yet, the government has not amended or reviewed the law.

The counter-argument

It is likely that the extension of the aggravated offence would be contested by some who claim that men do suffer hostility because they are men. It may be argued that even if this is not common, there is no reason to deprive them of the benefits of better policing of such incidents.

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