

# Gypsies and travellers: Britain's forgotten minority

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## Legislation cited

Anti-social Behaviour Act 2003 (c.38)

Anti-social Behaviour Bill 2003

Race Relations (Amendment) Act 2000 (c.34)

Human Rights Act 1998 (c.42)

Housing Act 1996 (c.52)

Mobile Homes Act 1983 (c.34)

Race Relations Act 1976 (c.74)

European Convention on Human Rights 1950 Art.2 Protocol 1, Art.8, Art.14

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***\*E.H.R.L.R. 335** This opinion, drawn from a public lecture under the auspices of the British Institute of Human Rights, comprehensively outlines the practical problems facing the Gypsy and Traveller community, little understood or reflected in the tabloid press. The author depicts the Race Relations Act and in a more significant respect the Human Rights Act as sources of optimism in challenging the inequality this minority experiences. She concludes by calling for local authorities to provide suitable legal sites for such communities and for the Press Complaints Commission to take action to curb reporting which fuels community tensions, helping to promote a society in which every individual can be respected as unique.*

The weeks preceding Britain's general election in May witnessed an extraordinary level of hostility to Britain's Gypsy and Traveller communities in the tabloid press. *The Sun* newspaper launched a campaign, "Stamp on the Camps", highlighting unlawful encampments and developments which, it said, were "dirty, cluttered, insanitary and an eyesore". The catalyst was a series of court rulings, relying on the Human Rights Act, which allowed homeless Gypsies and Travellers to remain on unauthorised sites; and subsequent action by the Deputy Prime Minister to tackle the underlying cause of the problem by increasing the number of legal sites. "The villain of the piece", *The Sun* declared, "is the Human Rights Act, which our judges have limply interpreted to mean that these wandering tribes have a right to respect for family life and respect for their homes which outweighs any harm they might do to the environment or rural communities".<sup>1</sup>

The European Convention on Human Rights, which the Human Rights Act brought into UK domestic law in 2000,<sup>2</sup> was a key pillar of Europe's response to the Nazi holocaust in which half a million Gypsies were among those who lost their lives. The ***\*E.H.R.L.R. 336*** Convention is now helping to protect the rights of this community in the United Kingdom. But the backlash which has ensued, among the opposition Conservatives and sections of the public as well as the tabloid press, demonstrates how fragile is the Human Rights Act's acceptance some five years after it came into force.

## Gypsies and Travellers

It is thought that there may be no more than 300,000 Gypsies and Travellers in Britain, equivalent to the size of the Bangladeshi community. There may, according to a recent parliamentary inquiry, be less than half that number. Gypsies and Travellers are certain there are more.

Most are Romany Gypsies, descended from migrants from India who first travelled to Europe around 1000 AD. History records that Gypsies' preference for self-employment, their mobility and unorthodox life style were perceived as a threat in a feudal society dominated by the master-servant relationship, and in which little deviation was allowed from strict social norms.

King Henry VIII sought to banish Gypsies from England in the sixteenth century, in a brutal persecution mirrored across Europe. But the public needed the labour and services which Gypsies provided, and their nomadism evolved to take advantage of seasonal work. In modern times, nomadism also remained a survival tactic: public hostility at the presence of Gypsies, and calls for new byelaws, subsided when they moved on. Public hostility thus encouraged the very nomadic behaviour of which the public was itself so critical.<sup>3</sup>

Romany Gypsies were finally confirmed as a distinct ethnic group, entitled to the protection of the 1976 Race Relations Act, in a test case taken by the Commission for Racial Equality ("CRE") in 1989.<sup>4</sup> Irish Travellers, also recognised as an ethnic group since 2000 in England and Wales,<sup>5</sup> were first recorded in Ireland in the fifth century as a nomadic group with a distinct identity, dialect and social organisation. Like Gypsies, Irish Travellers were rejected by mainstream society. They first came to England around 1850.

There is a common misconception that all Gypsies and Travellers live on the road. In practice, through choice or reluctant necessity, the majority now live in permanent housing. But this is an anathema for many. They may not want to travel frequently, or at all, but do want to live in a caravan or mobile home, on a site, in a community of family and friends. It may be a caravan that no longer has the means to move, but has the proximity to the outdoor world that bricks and mortar exclude. Thus for some nomadism is a way of life; for others it is a state of mind. As one man described the prospect of living in a house: "It's like catching a wild bird off a tree and putting him in a cage--it's not your life".<sup>6</sup>

Many people find it difficult to understand why it is so important to the families in these communities to live in a caravan. But that is the challenge of diversity: to understand and respect the right to be different. And to a limited extent the law does *\*E.H.R.L.R. 337* so. The majority of the 15,000 caravans that are home to Gypsy and Traveller families in England are on sites provided by local authorities, or which are privately owned with planning permission for this use. But the location and condition of these sites would not be tolerated for any other section of society. 26 per cent are situated next to, or under, motorways, 13 per cent next to runways. 12 per cent are next to rubbish tips, and 4 per cent adjacent to sewage farms. Tucked away out of sight, far from shops and schools, they can frequently lack public transport to reach jobs and essential services.<sup>7</sup>

## Shortage of sites

So we cannot say that even those living on legal sites--for which if tenants they pay rent and for utilities as others do--experience equality of provision.

But it is also the case that more than a quarter of the 15,000 caravans--27 per cent--are not on legal sites. Local authorities once had a statutory duty to provide sufficient sites, but it was repealed in 1994. Since then, public provision has remained static but demand has grown. At least 4,500 new pitches are needed.<sup>8</sup>

When the statutory duty to provide sites was repealed, the then Government advised Gypsies and Travellers to buy their own land and many did. They then found it near impossible to get planning permission for caravan use, in part because that advice coincided with new restrictions on use of the "green belt" which surrounds urban areas, and sometimes because they were ill advised in buying land in areas for which residential use would never be allowed. In 1997, 90 per cent of planning applications from Gypsies and Travellers were rejected, compared to a success rate of 80 per cent for all other applications.<sup>9</sup>

Those without a legal pitch for their caravan are recognised in law as homeless. 18 per cent of Gypsies and Travellers were homeless in 2003 compared to 0.6 per cent of the population. But of 152 local authorities surveyed by the human rights Peer,

Lord Avebury, in 2003, 107 had failed entirely to mention the needs of Gypsies and Travellers in the Homelessness Strategy which, by law, they are obliged to prepare.

Herein lies the source of so much of the disadvantage experienced by Gypsies and Travellers and of the tension with their neighbours. Lacking legal sites on which to live, some pitch on land belonging to others; or on their own land but lacking planning permission for caravan use. There follows a cycle of confrontation and eviction, reluctant travel to a new area, new encampment, confrontation and eviction. Children cannot settle in school. Employment and health care are disrupted.

Unauthorised encampments and developments are harmful for Gypsies and Travellers. They can also have very negative consequences for other residents. Established in unsuitable locations, lacking basic toilet facilities and waste disposal; needing concrete foundations for caravans in what may be areas of natural beauty, they can create environmental damage, personal stress for those living near by and fraught community relations.

**\*E.H.R.L.R. 338** This situation has legitimised overt hostility not just to the individuals concerned but to Gypsies and Travellers as a community. That was most clearly demonstrated by some residents of the village of Firle, Sussex, in October 2003. In their annual bonfire celebration, the village bonfire society chose to burn an effigy of a Gypsy caravan, with a picture of a mother and children at the window and "Pikey" written on the side, shouting "burn, burn". Although reported for incitement to racial hatred, the Crown Prosecution Service ("CPS") found itself unable to prosecute.

The law rightly sets a high threshold before using criminal penalties to limit free speech. In the particular circumstances of this case, in which the bonfire society burns a different effigy each year, using the same language, the CPS concluded that there was neither evidence of intention to stir up racial hatred nor evidence from those present that this was likely to be the result. The case illustrates the classic tension between protection of free speech and protection of minorities, and the need to identify alternative ways to address such behaviour if the high threshold for the incitement provisions is to be retained.

#### **Press coverage**

In the months before the general election campaign, a series of unauthorised encampments and developments had already led to vitriolic press coverage denouncing the Gypsies or Travellers involved, with little understanding of the reasons why they can find it impossible to find a legal site.

The newspapers concerned may argue that they merely reflect public attitudes in their coverage. The evidence suggests that they reinforce and legitimise them. A MORI poll in 2003 found that the single most significant source of attitudes towards minorities was the media. A third of people admitted personal prejudice against Gypsies and Travellers, a level of prejudice matched only by that towards asylum seekers.

The tabloid coverage highlights the need for the body which regulates the press, the Press Complaints Commission, to review its Code of Practice, as the CRE asked it to do some months ago. In particular, the CRE asked that the press be expected to take into account the effect which the language or tone of reporting could have on inciting racial tensions in communities, and that the Code refer specifically, in this respect, to Gypsies and Travellers.

#### **Negative outcomes**

Overt discrimination remains a common experience. In an era in which it would now be unthinkable for landlords to use the "No blacks, no Irish, no dogs" signs seen in Britain in the 1950s, "No Traveller" signs remain a frequent occurrence. As pervasive is neglect of their need for basic services: GPs who refuse to accept Gypsies or Travellers as patients; local authorities which fail to do repairs, to consult when decisions are taken that affect them, or even to reply to their letters. There is a constant struggle to secure the bare necessities, exacerbated by the inability of many adults to read and write, by the reluctance of local officials to visit sites, and by the isolation of these communities from the support of other local residents.

Gypsies and Travellers are near invisible in official statistics, rarely appearing in the key data sets by which we measure inequality. But we know that these are communities **\*E.H.R.L.R. 339** experiencing severe disadvantage. Infant mortality is twice the national average and life expectancy at least 10 years less than that of others in their generation. The school Inspectorate, Ofsted, estimates that in England around 12,000 Gypsy and Traveller children of secondary school age were not registered in a school in 2003, with less than 20 per cent of those over 16 attending courses.<sup>10</sup> Bullying in schools is prevalent and the children find that, unlike pupils from other ethnic traditions, their school features no positive images of their community.

Of those children who did attend school in 2003, 22 per cent of Gypsy pupils and 17 per cent of Irish Traveller pupils gained no passes at GCSE, the state exams taken by 15-16 year olds, compared to only 6 per cent of the pupil population as a whole.<sup>11</sup>

Yet there are reasons, now, to be optimistic. A combination of legal and political developments has created a window of opportunity--fragile but real--which *could* transform the experiences of these communities.

### Race Relations Act

The original Race Relations Act 1976 did not lead to the improvements in life chances for this community that its creators would have hoped. It did secure recognition for Gypsies and Irish Travellers as ethnic groups. And some have successfully challenged discrimination in jobs and services. Nevertheless, it is evident from the disadvantage now experienced by these communities that the 1976 Act did not deliver substantial results. The Act relies on individuals having the confidence, evidence and resources to mount a case and few cases have been taken.

Moreover, discrimination litigation, while providing a remedy for the victim, is not always effective in securing reform of the underlying structures, policies and practices from which the discrimination and disadvantage results--as the murder of London teenager Stephen Lawrence and subsequent inquiry demonstrated. That case led to the Race Relations (Amendment) Act 2000 which put a statutory duty on public authorities --from individual police forces, local authorities and health care providers through to government departments--to take active steps to promote race equality and good race relations.

In October 2004 the CRE launched a major scrutiny exercise to establish whether local authorities have built the needs of Gypsies and Travellers into their planning, housing and eviction policies. This exercise, a response to the complaints it receives from Gypsies and Travellers and to requests from local authorities for advice on handling the competing pressures they face from other residents, will report in October 2005.

At the national level it is evident that the statutory duty to promote race equality has influenced the agenda of some government departments. The Act requires them to make arrangements to assess the impact of proposed laws and policies on race equality. In at least one instance, the Anti-Social Behaviour Bill in 2003, the drafting of the Bill was revised when the potential impact on Gypsies and Travellers became clear. The Act now provides that its powers of eviction cannot be used unless there is a *suitable* pitch \*E.H.R.L.R. 340 to which the Gypsies or Travellers can move. The shortage of suitable sites has meant that, in practice, the new powers have been little used.

Of most significance are the steps which the Office of the Deputy Prime Minister has taken to mainstream the accommodation needs of Gypsies and Travellers into the housing and planning system. The opportunity was taken in the Housing Act 1996 to put a legal duty on local authorities to assess the accommodation needs of Gypsies and Travellers; and social housing providers are now able to receive public funds to provide sites. Under separate arrangements,<sup>12</sup> Regional Planning Bodies also have to make an assessment of need, and to ensure that Regional Spatial Strategies require allocation of land for site provision--to the extent of specifying the number of caravans for which local authorities must allocate land in their Local Development Plans. Local plans are tested through public consultation and may be amended by the Planning Inspectorate if they fail to meet the needs identified.

A parliamentary committee has argued that this mainstreaming approach should be backed up by a specific statutory duty on local authorities to provide sites, a view supported by the CRE, the Association of Chief Police Officers and the Traveller Law Reform Coalition of Gypsy and Traveller organisations. If the Government's preferred approach is seen to deliver, the pressure for that specific duty may diminish.

### Human Rights Act

The Government's policy reform is in part a response to the protection for Gypsies and Travellers that has been extended by the courts in recent cases.<sup>13</sup> The Human Rights Act requires a public authority to act in a way which is compatible with the European Convention on Human Rights ("ECHR") and a series of cases in the United Kingdom and in Strasbourg has established the importance of this constraint on local authorities in relation to planning, homelessness and evictions. Most significant have been Art.8 (right to respect for private and family life), Art.14 (freedom from discrimination in the enjoyment of Convention rights) and the right to education in Art.2 of Protocol No.1.

The courts have accepted, for instance, that the protection of Art.8 includes respect for a Gypsy's traditional way of life. A local authority wishing to prevent Gypsies or Travellers taking up residence on land in breach of planning control, or to evict them

from an unauthorised site (which it may want to do for the legitimate aim of protecting the local environment) now has to take into account the impact on the individual's health, the need for a stable education for their children, and their ability to maintain their traditional way of life. In this balancing act, the availability of a suitable alternative site is a key factor. The fact that the home was established unlawfully does not exempt it from the protection of Art.8. Moreover, the courts have recognised that a *\*E.H.R.L.R. 341* caravan is not only a home for a Gypsy but an integral part of their ethnic identity.<sup>14</sup> In a case involving Tunbridge Wells Borough Council in 2001, the Judge ruled that it would be contrary to Arts 8 and 14 to expect a Gypsy to accept conventional housing and to hold it against him that he was not prepared to accept it. He likened this attitude to penalising a Christian for refusing to work on a religious holiday or a Muslim for refusing to eat certain foods.<sup>15</sup>

In a significant recent case, the ECHR has been used successfully to challenge the Mobile Homes Act 1983 which fails to provide Gypsies and Travellers on local authority sites with the same security of tenure and protection from eviction as that enjoyed by other residents of mobile homes. In the *Connors* case in 2004, the European Court of Human Rights found that there was no reason why local authority sites would become unmanageable if their residents had the same rights as other residents of mobile homes.<sup>16</sup>

There have also, however, been cases where the courts did not consider an eviction disproportionate.<sup>17</sup> Nor was it necessarily inappropriate for an authority to offer bed and breakfast accommodation to a family in the short term: as in the case of *Codona* last year, despite the applicant's recognised "aversion to conventional housing".<sup>18</sup> The Human Rights Act alone is thus no substitute for a housing and planning system in which the particular needs of these communities are given equal weight to those of other members of society.

#### **Commission on Equality and Human Rights**

Public bodies in Britain were slow to wake up to the challenge that the Human Rights Act presents. That was in no small part due to the lack of any statutory body to promote awareness of the Act and a lack of guidance on compliance and good practice. This is now to be rectified with the establishment of a Commission on Equality and Human Rights in 2007.

The Commission for Racial Equality may not be brought into the new Commission until 2009 and would continue to address race equality and race relations issues during that period. Gypsies and Travellers will nevertheless have a stake in the establishment of the new body whose broad equality and human rights remit will be important to them, not least where their rights as women or as people with disabilities, for instance, need to be addressed.

#### **Conclusion**

Tackling the shortage of legal sites for Gypsies and Travellers is the essential first step to addressing the inequality they experience and the tensions between them and other *\*E.H.R.L.R. 342* residents. The action which the UK Government is now taking to ensure local authorities assess need and set aside land for sites could make a significant contribution to resolving that issue. If it does not, an enforceable statutory duty to provide or facilitate sites may yet be needed.

The Human Rights Act is beginning to ensure that the rights of Gypsies and Travellers to live in caravans, and the right of their children to continuity of education, are given due weight in planning and housing decisions. The duty on public bodies to promote equality and good race relations, under the Race Relations Act, has the potential to drive good practice across the public sector.

The underlying problem is the widespread prejudice against Gypsies and Travellers. Where that is fuelled by press reporting, the impact of the Press Complaints Commission needs to be felt. Where resentment arises from unauthorised encampments, it can be addressed by provision of suitable, legal sites.

Where negative perceptions are fuelled by the anti-social behaviour of a minority of Gypsies and Travellers, other members of these communities can be as much the victim as residents of the settled community. They are the losers when people in transit leave a trail of rubbish and destruction on the sites which are their permanent home, and intimidate anyone who challenges that unacceptable behaviour.

Gypsy and Traveller community leaders have spoken out against such behaviour. Many individuals lack confidence in the public bodies to which it should be reported. Local authorities and the police need to build a relationship of trust which would facilitate a constructive dialogue on how anti-social behaviour can be addressed.

Where community leaders have spoken out, their voices have been drowned by the vocal hostility hurled at the community as a whole: a community held responsible for the offences of an anti-social minority with whom they may have no connection other than their ethnicity. Gypsies and Travellers are not the only ethnic minority to face criticism for the behaviour of a minority among them. But Gypsy and Traveller leaders have found it difficult to secure coverage for their views. Organisations in the mainstream statutory and voluntary sectors could look for ways in which to provide a platform for members of the Gypsy and Traveller communities to be heard.

Equality of rights and responsibilities, and respect for the dignity of each individual, is of course the goal underpinning the Human Rights Act. Human rights advocates need to take account of the fact that much of the recent hostility to Gypsies and Travellers has been an overt attack on the Act itself. We cannot now defend the Act without explaining why it is right that it has provided some protection for individuals in the Gypsy and Traveller communities.

Even among those who promote human rights and equality, there are some who see the hostility to Gypsies and Travellers as different; who see no contradiction in condemning them collectively, forgetting to see each individual as unique. That message cannot be made more powerfully than in the following words written by Charles Smith, chair of the Gypsy Council, in his collection of poems, *Not All Wagons and Lanes*.

### Identity

What do you see

When you look at me?

Your idea of my identity

*\*E.H.R.L.R. 343* Am I the Gypsy

You've read books about?

Am I the Traveller

You heard talk about?

Will you see the folks

Not in the books?

Will you judge my cousins

Just by their looks?

Will you know the Gypsy who lives in your street?

Or the one in the butchers who serves you your meat?

What of the midwife who helped at the birth of your son

Her parents were Gypsies so she must be one

Then there's the old lady who tends all the graves

She preaches the Bible and claims Jesus saves



You will recognise her son who calls with a bell  
The other one's a teacher, you won't know him so well.  
On a stall in the market or shop in the High Street  
It might be a Gypsy who owns it who you regularly meet  
I could be your postman, milkman or priest  
Busman, mechanic or waiter serving you a feast.  
So next time you down us, don't just look at a few  
Because we are all around and we're looking at you too  
And you are not so perfect to be calling us names.

### Footnotes

- 1 *The Sun*, March 9, 2005
- 2 The Human Rights Act 1998 came into force in October 2000.
- 3 R. Taylor, "Travellers in Britain, A Minority and the State" (2004) 77 *Historical Research* 575.
- 4 *CRE v Dutton* [1989] Q.B. 783.
- 5 *O'Leary v Allied Domecq*, Case No.CL 950275-79, unreported.
- 6 In P. Niner, *The Provision and Condition of Local Authority Gypsy and Traveller Sites in England* (ODPM, 2002).
- 7 ODPM evidence to ODPM Select Committee inquiry into Gypsy and Traveller Sites (May 2004) and Niner, *ibid*.
- 8 ODPM Select Committee, *Gypsy and Traveller Sites*, Thirteenth Report of Session 2003-04, Vol.1 (HC 633-1, November 8, 2004).
- 9 T. Willimans, *Private Gypsy Site Provision* (ACERT, 1997).
- 10 Ofsted, *Provision and Support for Traveller Pupils* (HMI 455, 2003) ([www.ofsted.gov.uk](http://www.ofsted.gov.uk)).
- 11 DfES, *National Curriculum Assessment and GCSE/GNVQ attainment by pupil characteristics in England 2002* (2004, final & 2003, provisional).
- 12 Planning and Compulsory Purchase Act 2004 and subsequent guidance.
- 13 See C. Johnson and M. Willers, eds, *Gypsy and Traveller Law* (Legal Action Group and CRE, 2004); G. Moon, "Moving forward? Human rights for Gypsies and Travellers" (2004) 1 *Justice Journal* 000; B. Cohen, "Race discrimination in UK government immigration practice" *Briefings*, Discrimination Law Association, February 2005; C. Johnson, M. Willers and A. Murdoch, "Gypsy and Traveller Law Update", *Legal Action*, August 2004.
- 14 In particular see *Chapman v United Kingdom* (2001) 33 E.H.R.R. 399; *South Buckinghamshire DC v Porter* [2001] EWCA Civ 1549; [2002] 1 W.L.R. 1359 at [38]-[42]; *Basildon DC v Secretary of State for the Environment* [2001] J.P.L. 1184.
- 15 *Clarke v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 800; [2002] J.P.L. 552.
- 16 *Connors v United Kingdom* (2005) 40 E.H.R.R. 9.
- 17 As in a case concerning travelling show people, *Davis v Tonbridge and Malling BC* [2004] EWCA Civ 194; *The Times*, March 5, 2004.
- 18 *Codona v Mid-Bedfordshire DC* [2004] EWCA Civ 925; [2005] H.L.R. 1.