

## **"Is the House of Lords decision in the Begum case consistent with freedom of expression in a multi-cultural society?"**

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### **Introduction**

In this essay the decision of the House of Lords in the Shabina Begum case will be explored to see if what was decided was consistent with freedom of expression in a multi-cultural society. Firstly the Shabina Begum case will be looked at followed by the judgements given by the individual Lords.

### **The Shabina Begum Case**

Shabina Begum, a Muslim schoolgirl, attended a majority Muslim school in Luton, Denbigh High School. Although a significant amount of pupils at the school were Muslim there were many other faiths present.

The school designed a uniform which the school regarded to be in the best interests of the school as well as contributing to social cohesion and harmony among the pupils of a multi-cultural society. There were three different options available for pupils. One of the options offered was the shalwar kameez, which had been devised with parents, pupils, staff and the local mosques, which had been approved by the majority Muslim school governors. This option was agreed to be suitable for Muslim girls to dress modestly and respectfully.

For the first two years of Shabina's schooling, she wore the shalwar kameez. In 2002 she arrived at school at the beginning of the academic year aged 13 in a jilbab. A jilbab is a long coat-like garment which covers the whole body except for the face, hands and feet. She spoke to the assistant head teacher who insisted she go home and change into the correct attire. Shabina went home but refused to wear the school uniform. The school governors refused to admit her to the school until she complied with the correct uniform policy. For two years she was out of school, during this period the school made many attempts to educate her and bring her back to the school however she refused. Eventually she enrolled into another school where the jilbab was permitted.

In February 2004, Shabina went to the High Court for a judicial review claiming that her rights had been infringed. She declared violations in her right to freedom of thought, conscience and religion as well as her right to education according to the Human Rights Act. The High Court rejected her claim so she appealed to the Court of Appeal. The Court of Appeal decided that the school did breach her rights and her concerns were not dealt with in an appropriate manner while at the same time failing to give her beliefs the weight they deserved. As a result the Court of Appeal overturned the High Courts decision.

The school appealed the decision of the Court of Appeal to the House of Lords before Lord Bingham, Lord Nicholls, Lord Hoffmann, Lord Scott and Baroness Hale. The hearing lasted for three days. In a unanimous decision, the House of Lords found that there had been in fact no violation of Shabina's right, however the Lords did not all hold the same reasoning behind their judgements.

### **Lord Bingham of Cornhill's Judgement and Reasoning**

Lord Bingham stated that the school uniform was devised for the protection of others rights and freedoms, the school had ensured that the uniform respected Muslim beliefs and was acceptable by the majority of Muslims. Allowing Shabina to wear the jilbab would inflict repercussions for other pupils, such as those who wish not to wear it may be forced or pressurised into doing so.

The right to education would only be violated if Shabina was denied access to general education. Shabina's failure to attend school was due to her refusal to comply with the school's uniform policy. Also she could have easily found a school which permitted the wearing of the jilbab. There was no violation of her right to education as she had not been denied access to the general education system.

The head teacher did not at any stage exclude Shabina on a permanent or fixed time on disciplinary grounds and there was never an end of the pupil and teacher relationship.

There was no violation of Shabina's right to manifest her religion as she knew of the uniform policy as the school went to great lengths to ensure that all prospective parents and pupils were aware of it, also there were other schools available in the area where she could have worn the jilbab. If she chose an establishment which limited her rights or if there were other alternatives to manifest her religion then there is no interference with her rights. In an area where there are multiple religious groups within a democratic society, restrictions may be needed in order to respect everyone's beliefs. Restrictions aim to ensure that there is harmony and peaceful coexistence between all as well as in this instance a means to prevent pressurising students into practicing aspects of their religion they wish no to. Allowing the jilbab as part of the uniform can lead to the formation of groups or cliques based upon religious and cultural beliefs.

Shabina was never excluded from school; she left out of her own choice by failing to abide by the school's uniform policy. The circumstances of this situation were self inflicted.

### **Lord Hoffmann's Judgement and Reasoning**

Lord Hoffmann clearly stated that the extent of which the school got parents, students, staff and local mosque imams (priests) involved in the devising of the uniform to meet religious and cultural preferences for pupils and families was evident. Shabina wore the shalwar kammez without complaint for two years until September 2003 she arrived at school in a jilbab.

The school wrote to Shabina's family explaining that she had to attend school but would only be admitted if she wore the correct uniform. There were many attempts to get Shabina to come back to the school and to comply with the school uniform, however all attempts made by the school and the educational welfare officer failed. The school did not want to exclude Shabina; they wanted her to wear the correct uniform. Shabina did try to enrol at another school (Challney Girls' School) in October 2003, where the jilbab was permitted. However she did not get accepted as she had waited too long to apply and the school was full. She refused to appeal the decision feeling that there was no point to it. In September 2004, she enrolled at Putteridge High School.

Lord Hoffmann found in his opinion found no infringement of her right to manifest her religion as there were other schools available where she was able to wear a jilbab. Her family knowingly chose a school where the jilbab was not permitted. Shabina was able to seek help however she chose not to and a more forceful approach was taken by her and her family. It was decided by her and her family

that it was a problem of the schools and not theirs. They claimed that she had the right to wear what she chose at the school, which goes against the principles and point of a school uniform. Changing schools may have been problematic for Shabina however possible nonetheless; sometimes people have to suffer for their beliefs.

### **Lord Nicholls of Birkenhead's Judgement and Reasoning**

Lord Nicholls agreed with the decisions of Lord Bingham and Lord Hoffmann. He believed that the decision made by the school was completely justified however; Lord Nicholls felt that the idea of Shabina moving to another school which allowed her to wear the jilbab was overestimated whereas the disruption that would have been caused to her education was underestimated.

### **Lord Scott of Foscote's Judgement and Reasoning**

Lord Scott of Foscote felt that there was no infringement of Shabina's right to manifest her religion or beliefs and there was no denial of her right of education. Prospective pupils and their family's were given a thorough, detailed explanation of the school uniform policy in writing and graphically. Shabina's family sent her to a school outside the catchment area knowing very well what the uniform policy was; also her sister was already a pupil at the school who also knew.

The school went to great lengths to ensure the uniform policy was acceptable for Muslim girls and Lord Scott felt that it did meet the requirements of Islamic dress for young girls. The school was well within their rights to not allow Shabina to choose what she could wear to school as it contradicts the point of having a school uniform. Shabina knew of other schools within the area where she would have been able to wear the jilbab, however she chose not to. There was no infringement of her right to manifest her religion as she chose a school knowing the uniform policy as well as the knowledge of other schools where she could manifest her religion in the way she wanted to.

The head teacher Mrs Bevan wrote to Shabina's family explaining that Shabina was to attend school in the correct uniform. Shabina and her family met with their solicitor and were planning on suing the school. Also Shabina and her family insisted she would not be attending school until she was allowed to wear the jilbab. The school and the Education Welfare Service made many attempts in getting Shabina back to school. However they both failed as Shabina and her family continuously insisted that Shabina wore the jilbab.

Lord Scott believed the decision to not admit Shabina to the school wearing clothes other than the correct uniform was a decision based on disciplinary grounds. Shabina's failure to comply with the school's rules lead to her absence from school. She was continuously encouraged to return to school. If Shabina had in fact been excluded then she would not have been encouraged to return. There was no violation of her right to education as she was not denied it. Shabina was merely asked to comply with the rules regarding uniform, she herself insisted on not returning to the school or complying with the uniform, not the school.

### **Baroness Hale of Richmond's Judgement and Reasoning**

Baroness Hale took into account that schools are generally chosen by parents/guardians instead of the actual child. Shabina's family chose the school for her, she decided that her religion required her

to wear the jilbab as she grew older and felt that the school's uniform policy should be changed to accommodate her requirements.

The fact that her family chose the school and not her, could count as interference towards Shabina's right to manifest her religion. However the interference was justified as it had the legitimate aim of protecting the rights and freedoms of others.

Baroness Hale felt that there was no equality when a dress code required women to completely cover themselves while leaving men to choose what they want to wear.

The school is to encourage harmony and peaceful coexistence in the school which is to be continued outside the school and uniforms can help as it helps reflect people in the same way as equals regardless of ethnic, religious and social divisions. Schools can help and support pupils in deciding how far to adopt or distance their religion. The school tried to devise a uniform to suit the social conditions as well as considering religious and cultural beliefs.

Concerns of permitting the jilbab were also expressed by many girls; they felt they would be pressured into adopting the jilbab regardless of their own personal beliefs.

### **Is the House of Lords decision in the Begum case consistent with freedom of expression in a multi-cultural society?**

In a multicultural society it is hard to ensure everyone is equally respected. In the Shabina Begum case it is clearly evident that the school went to great lengths to meet the needs of all pupils in a multicultural society when devising the school uniform, especially including the requirements for Muslim girls to dress modestly. There were three options available which meant that virtually everyone had a uniform that was suitable to them. Shabina had the option of a shalwar kameez which was decided to be perfectly acceptable for Muslim girls to wear by other Muslims including Imams (priests), and to accompany it headscarves (hijabs) were permitted. Shabina decided that her religion required her to wear the jilbab and she was never denied the right to wear the jilbab, meaning no violation of her right to manifest her religion and beliefs. She was only denied access to the school wearing the jilbab, as overall the impact of permitting it would cause adverse repercussions for many of the other students and was not part of the uniform policy.

The repercussions which would have been inflicted upon others from allowing the wearing of the jilbab would have been immense. It is always hard to please everyone but if the school did allow Shabina to wear the jilbab - pleasing one person - a large amount of other pupils would have been thrown into disarray. It was clearly expressed by many other Muslim pupils at the school that they did not wish to wear the jilbab and would in fact be pressurised or forced to wear it if it became part of the uniform. This majority of pupils would then be affected and their views would not be respected if the jilbab was permitted. By not allowing it a greater majority of pupils would be happier, which also in turn meant that a greater majority of pupils were able to freely express themselves as they would not be forced into wearing something they did not want to.

Furthermore allowing the jilbab could lead to groups or cliques being formed based upon religious and cultural beliefs between Muslims and other faiths as well as in between Muslims. This can divide a society and can lead to future problems from such a division. It can create friction, uneasiness and ignorance towards other religions and cultures thus affecting cohesion and harmony amongst all in and out of the school. In an extreme view it can lead to racial prejudice, conflict and violence. So in fairness the decision made by the school and House of Lords is just, as well as being consistent with

freedom of expression. Shabina was free to express herself, is she felt she was unable to do so; there were other schools where she could.

If Shabina felt strongly about wearing the jilbab, and she did, she was more than capable of attending a school where she was allowed to. As the area she was in had a large proportion of Muslims there were other schools, which Shabina knew of, which permitted the wearing of the jilbab. Instead of raising an issue within a school which clearly did not want to permit the wearing of the jilbab, she could have easily transferred to a school where she would have been allowed to. It was unnecessary for Shabina to lose two years of her schooling due to her own stubbornness and unwillingness. It is fair to say that it was also selfish of Shabina to cause an issue within the school when the school were merely trying to protect and respect the beliefs and freedom of expression of other pupils, who expressed their views as a majority opposing the jilbab.

Cherie Booth did question the school's wishes to appear secular as the school permitted the wearing of certain religious items, such as the headscarf (hijab), which was, she claimed, discrimination. By allowing certain religious items and not the jilbab, the school was preventing Shabina from expressing her religious beliefs while allowing others to express theirs. The jilbab covered their bodies, which was what the school uniform did; the headscarf allowed Muslim girls to cover their hair, which they were unable to do. This meant that those who wished to cover themselves without wearing a jilbab were able to. By giving the option of the headscarf as part of the uniform, it meant that stricter Muslim families were pleased while giving the choice to those who were undecided. The wearing of a headscarf for many Muslim girls is more accepted than the jilbab, and many opted for and wanted the headscarf to be permitted, unlike the jilbab where many were against it. All Muslim girls, including Shabina, were free to express their religion and define and show themselves as Muslims through wearing the headscarf, meaning they were free to express themselves in a multi-cultural society in a less threatening way than that the jilbab would have done.

### **Conclusion**

There are many reasons why the House of Lords decision was just and consistent with freedom of expression, such as forbidding the jilbab would avoid groups and cliques being formed on religion and cultural beliefs, and the majority of people were against it as they felt they would have been pressurised and forced into wearing the jilbab.

On the other hand, Shabina's freedom of expression was limited as she was forced to go to another school (in order to complete her education) so she could wear the jilbab and manifest her religion and beliefs the way she wanted to.

Nonetheless the decision of the House of Lords was definitely consistent with freedom of expression in a multi-cultural society, as everyone has to be considered and restrictions and sacrifices have to be made to ensure cohesion and harmony as well as protecting the rights and freedoms of others. The jilbab had to be restricted otherwise a majority of people would have suffered from the repercussions that would have been caused. The restriction was for the greater good and the best interests for the school and its pupils.