

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

The case of *Regina (SB) v Governors of Denbigh High School* involved a Muslim schoolgirl named Shabina Begum, who attended Denbigh High School from the age of 11, a school where the majority of pupils were Muslims. For the first two years of her schooling, there were no problems, however in her second year (at the age of thirteen) she decided that the uniform, a shalwar kameez, did not satisfy the requirements of her religion and she wanted to wear a jilbab. A jilbab is a more modest Muslim outfit that conceals the contours of a female figure more than the shalwar kameez, making it more modest. However her school did not allow her to wear this stating that it is not the uniform she agreed to wear when she enrolled at the school, and said that she must go home until she agrees to come into school wearing the correct uniform. So in reaction Shabina issued a claim on the basis that the school was interfering with her human rights to manifest her religious beliefs (Article 9) and her right to an education (Article 2 of protocol No. 1). She lost in her case in the High Court, but then won later in the Court of Appeal. After this the school appealed to the House of Lords judicial committee and won, it is this decision and its consistency with freedom of expression that I will be looking at in this essay.

Freedom of expression in a multi-cultural society

It is believed by some people that the inability to choose her uniform was preventing Shabina's freedom of expression, an important aspect of the multi-cultural society we live in. Freedom of expression is defined as 'not only freedom of verbal speech but any act of seeking, receiving and imparting information or ideas, regardless of the medium used.' This would mean that Shabina's use of clothing to impart the ideas of her religion is part of her right to freedom of expression. Freedom of expression and speech is seen as a very important part of our multi-cultural society because it allows for us to consider our differences and learn from them, instead of trying to impose a single belief society. In fact the idea of freedom of expression and speech is so important that it is recognised as a human right under Article 9 of the European Convention on human rights, which states that everyone has the right to 'freedom of thought, conscience and religion.' Even in earlier documents like the *British Magna Carta* (1215) there was a section on the right to freedom on expression. In 2000 Tony Blair also stated his support for the right to freedom of expression when there was a demonstration outside 10 Downing Street 'I disagree with what you are saying but thank God you are free to say it'. So it is agreed that freedom of expression is very important, however it is clear that the nature of law means that freedom of expression is not always possible or reasonable in some situations.

The Begum case, why it would not be consistent with freedom of expression

The judges in the House of Lords gave many reasons for their decision to allow the appeal from the school on the Begum case. One of the reasons they gave was that ‘there was no interference with Shabina’s right to manifest her religion because there was no evidence to show she could not attend a more appropriate school where she could have worn the jilbab.’ They also referred to *Article 9 of the European Convention of human rights*, but disagreed with Shabina’s claim that her rights were violated and instead stated that ‘Article 9 does not say that one should be allowed to manifest one’s religion at any time and place of one’s own choosing’. This would in turn rule out the idea that Shabina could wear her own choice of uniform at school. Therefore you could argue that the European Convention of human rights is not consistent with freedom of expression, as it prevents people from expressing themselves at any time. The House of Lords also added in their decision that ‘students cannot by themselves decide what uniform they should be allowed or not allowed to wear’, this would suggest that schools and the law restrict the pupils’ ability to express themselves through what they wear.

A more simple argument for why the Begum case would not be consistent with freedom of expression in a multi-cultural society, is that if Muslims and any religion for that matter are not allowed to express and practice their religion in everyday life, this is not a very good example of integration of Muslims and other cultures into our society, it is discrimination and prejudice.

There is also the similar case of *R (X) v Y School* where a twelve year old girl was prevented at school from wearing a niqab, which is a full face veil, which covers everything but the eyes. It is understandable that this raises ‘identification’ issues and makes it more difficult for pupil and teacher to communicate, but the point made by the girls lawyers still stands, that wearing the niqab is part of her religious beliefs, just as the jilbab was part of Shabina’s religious beliefs, and so it is not consistent with the freedom of expression in a multi-cultural society, or consistent with Article 9 of the Human Rights Act 1998.

The Begum case, why it would be consistent with freedom of expression

From the outset of the case the House of Lords made sure to point out that ‘It is important to stress at the outset that this case concerns a particular pupil and a particular school in a particular place at a particular time.’ This meant that this particular case does not restrict freedom of expression in other schools, or for other pupils, and that in other words the duty to restrict freedom of expression in schools is down to the school. Also considering that Shabina could have at any point opted to go to a school that did allow her chosen uniform, her ability to express herself was not being prevented, and so the ruling of the case was consistent with the freedom of expression in a multi-cultural society. So in fact the case was only deciding whether or not the school was justified in refusing Shabina’s attempts to change the school uniform. This was also commented on in the decision by the Law Lords, who said that there was the understandable argument by the school that stated that ‘if the jilbab was allowed, the other girls in the school would feel pressurised to wear it’, which would mean that Shabina’s expression has had a negative effect on other people. Also if the point of including the jilbab in the school uniform is to allow the girls in the school to dress according to their religious beliefs, if they were to wear the jilbab because they felt pressurised to, rather than because they believe in the reasons for wearing it, then that almost defeats the object of including it. Meaning that even if Shabina’s rights had been interfered with, the decision to withhold them was justified, as it protected

others from negative behaviour, or at least that was the thoughts of two of the Law Lords deciding the case Lord Bingham and Lord Hoffmann.

In addition, the school that Shabina went to was in Luton, where ‘the population of Muslims is 15%, in comparison to 3% in England and Wales overall’, also many of the school governors of Denbigh High School were Muslim, who had created and approved the uniform themselves. The school also had the uniform approved for every new school year by teachers, governors, prospective parents and current parents to ensure that the uniform was satisfactory for everyone involved.

Another reason why you could argue that the decision was consistent with freedom of expression was the detail of the case involving her brother. As some people argue that the Begum case was never about religion. It has been said that Shabina’s brother and another man came to the school in September 2002 demanding that she is able to wear the jilbab, or they will sue the school, however the school did not back down in reaction to these threats. It has become apparent that the two men belong to an extremist Muslim group called Hizb ut-Tahrir, which have argued that since her personal religious beliefs have no impact on others she should be able to wear whatever uniform she wants, and practice her religion however she wants. So the argument is that Shabina was never fighting for her religious beliefs, but for her power to influence and override the school’s current system, which may be in some ways a type of freedom of expression, but it is not the manifestation of any belief.

There is also the case called *R (playfoot) v Mallais School* which was about another schoolgirl called Lydia Playfoot who lost her High Court battle to wear a Christian purity ring at her school in Mallais School in Hersham, West Sussex. Again in this case, the basis of the case was that her right to Freedom of religion (Article 9) was being violated, but the judge decided in favour of the school, that she was not obliged to wear the ring as a part of her religion and that it was just a piece of jewellery, whatever it was meant to symbolise. This case shows that the decision in the Begum case was not discriminating against the Muslim religion, because the same decision was made on a similar case about a symbol of Christianity. So in theory the decision made by the judges may be consistent with freedom of expression in a multi-cultural society, because it is not biased towards one particular culture or religion, and only makes decisions based on the law and the facts.

Conclusion

In this multi-cultural society it is important for freedom of expression to be available to everyone, no matter what culture or religion they are. In the Begum case the Law Lords decided that Shabina would not be able to wear the jilbab for the reasons that there was no interference with her rights, that she could have enrolled at a different, more appropriate school and that even if there had been interference, it would have been justified as it protected the school and the pupils at the school. Therefore I believe that the case is consistent with freedom of expression in a multi-cultural society, as her freedom of expression was never withheld, as she could have gone elsewhere.

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