

# HOUSE OF LORDS CASE STUDY

## Regina (SB) v Governors of Denbigh High School

### Background Facts

Shabina Begum, a Muslim schoolgirl, attended Denbigh High School in Luton from the age of 11. It was a mixed-sex school where the majority of pupils were Muslims but there were many from other faiths as well.

Girls at the school had a choice of three uniform options, one of which was a shalwar kameez. This consisted of a navy blue sleeveless kameez (smock-like dress) with a square neckline revealing a shirt collar and tie underneath, and navy blue shalwar or loose trousers tapering at the ankles (**see image 1 for an example of a shalwar kameez school uniform**). The school governors, many of whom were Muslim themselves, had approved the uniform as specifically designed to satisfy the requirement of modest dress for Muslim girls. Girls were also allowed to wear navy blue headscarves.

Shabina wore the shalwar kameez for her first two years at the school, but she then decided that it did not comply with her religious beliefs. Instead she wanted to wear a jilbab, a long coat-like garment which covered the whole body except for the face, hands and feet (**see image 2 for a photograph of Shabina wearing a jilbab**). There is a strongly held view amongst a minority of Muslims that only the jilbab adequately conceals the contours of the female body when girls approach adolescence.

Luton has a high proportion of Muslim residents (about 15% of the population, compared with 3% in England and Wales overall).

[http://www.luton.gov.uk/internet/social issues/population and migration/census%20information](http://www.luton.gov.uk/internet/social%20issues/population%20and%20migration/census%20information)

On the first day of the school year in September 2002, when she was 13 years old, Shabina arrived at school wearing a jilbab. The assistant headteacher asked her to go home and return in school uniform. From then on Shabina refused to wear the school uniform, and the school governors refused to admit her to the school wearing a jilbab. As a result, Shabina was out of school for about 2 years, until she eventually enrolled in another school in the area where the jilbab was allowed.

Image 1



Image 2



See BBC graphics explaining different types of Muslim veils and headscarves:

[http://news.bbc.co.uk/1/shared/spl/hi/pop\\_ups/05/europe\\_muslim\\_veils\\_and\\_headscarves/html/1.stm](http://news.bbc.co.uk/1/shared/spl/hi/pop_ups/05/europe_muslim_veils_and_headscarves/html/1.stm)

## The Claim for Judicial Review

In February 2004 Shabina brought a claim for judicial review in the High Court. She asked the judge to make a declaration that refusing to allow her to attend the school in a jilbab was unlawful because it violated her rights under the Human Rights Act. The rights which she claimed had been violated were her right to freedom of thought, conscience and religion and her right to education (Article 9 and Article 2 of Protocol No. 1 to the European Convention on Human Rights). The right to freedom of religion includes the right to “manifest” one’s religion in “practice and observance”, but that right may be subject to such limitations as are “prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others”.

The judge in the High Court rejected Shabina’s claims, but she appealed to the Court of Appeal who overturned the judge’s decision and granted the declaration Shabina sought.

A panel of three judges in the Court of Appeal decided that the school had breached Shabina’s rights to manifest her religion and to education. In their view the school did not deal with Shabina’s concerns in the right way, and in particular failed to give her beliefs the weight they deserved. The interference with her right to manifest her religion had not been shown to have been “necessary” and therefore was not justified. The Court did say, however, that it might be possible for the school to justify its uniform policy if it underwent a “structured reconsideration of the relevant issues”. (See interview with Shabina in the Guardian, 3 March 2005: <http://www.guardian.co.uk/uk/2005/mar/03/schools.faithschools>.)

Extracts from the European Convention on Human Rights (incorporated into UK law by the Human Rights Act 1998):

### **Article 9 – Freedom of thought, conscience and religion**

- 1** 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, to manifest his religion or belief, in worship, teaching, practice and observance.
- 2** Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

### **Article 2 of Protocol No. 1 – Right to education**

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

## **The appeal to the House of Lords**

The school appealed to the House of Lords. A hearing lasting three days took place before five Law Lords: Lord Bingham, Lord Nicholls, Lord Hoffmann, Lord Scott and Baroness Hale.

It was accepted by both sides that Shabina believed that her religion required her to wear a jilbab and that wearing a jilbab to school was therefore, for Shabina, a manifestation of her religion. Although not all Muslims agree that the jilbab is a religious requirement, the court was only considering Shabina's own religious beliefs.

The school (represented by Richard McManus QC) put forward the following arguments:

- (1) The school did not interfere with Shabina's right to manifest her religion because she chose the school knowing about its school uniform policy and she was free to attend another school where the jilbab was allowed.
- (2) Even if there was an interference with her right to manifest her religion, the school's response was a justified limitation on that right. In democratic societies where several religion coexist it might be necessary to place restrictions on freedom to manifest one's religion or belief in order to ensure that everyone's beliefs are respected. Allowing the wearing of the jilbab might lead to groups or cliques being formed. There were also some Muslims who did not wish to wear the jilbab and would feel pressurised to wear it if it was allowed.
- (3) There was no denial of the right to education, since the right does not include the right to any particular type of education or to education in any particular school.

Shabina (represented by Cherie Booth QC) responded that:

- (1) The school's refusal to let her wear the jilbab was an interference with her right to manifest her religion.
- (2) The interference was not justified. Any suggestion that the school wished to appear secular must be rejected as it was clear that the school expressly permitted the wearing of certain religious items of clothing. It was disproportionate to draw a distinction between religious symbols such as the headscarf, which was allowed, and the jilbab, which was not.
- (3) The unlawful exclusion also interfered with her right to education.

## **The Law Lords' Judgment**

The Law Lords delivered their judgment on 22 March 2006. They allowed the school's appeal, finding that there had been no violation of Shabina's human rights. (See guardian.co.uk article, 22 March 2006:

<http://education.guardian.co.uk/schools/story/0,,1736769,00.html>.)

The decision to allow the appeal was unanimous, but the Law Lords did not all adopt the same reasoning.

*Issues (1) and (3): Was there an interference with Shabina's right to manifest her religion, or her right to education?*

Lord Bingham, Lord Hoffmann and Lord Scott all decided that there was no interference with Shabina's right to manifest her religion because there was no evidence to show that there was any real difficulty in her attending one of other of the schools where she could have worn the jilbab. Relying on the case law of the European Court of Human Rights in Strasbourg, they held that Article 9 does not require that one should be allowed to manifest one's religion at any time and place of one's own choosing.

For the same reasons Lord Bingham, Lord Hoffmann and Lord Scott decided that there was no infringement with Shabina's right to education.

Baroness Hale and Lord Nicholls preferred to deal with the case on the basis that there was an interference with Shabina's right to manifest her religion. Baroness Hale took into account the fact that in reality the choice of secondary school is usually made by parents or guardians rather than the child herself, and that it cannot be assumed that the choices of a child are the product of "a fully developed individual autonomy".

*Issue (2): Was the interference justified?*

All of the Law Lords agreed that, even if there was an interference with Shabina's rights, the school was justified in acting as it did.

Lord Bingham and Lord Hoffmann thought that the school was fully justified in acting as it did, not least because it had taken immense pains to devise a uniform policy which respected Muslim beliefs but did so in an inclusive, unthreatening and uncompetitive way.

They also considered that it would be irresponsible for a court, lacking the experience, background and detailed knowledge of the head teacher, staff and governors, to overrule their judgment on a matter as sensitive as this.

Baroness Hale explored in more detail the opposing views on Muslim dress for women. In general, she said, it was up to women to choose what to wear, and she noted that some women find that they gain a sense of empowerment from wearing some types of traditional Muslim dress. However, schools were different: like it or not, “English society is committed, in principle and in law, to equal freedom for men and women to choose how they will lead their lives within the law”, and “a dress code which requires women to conceal all but their face and hands, while leaving men much freer to decide what they will wear, does not treat them equally”. In her view, an important task of schools is to promote social cohesion and a good school will enable and support young girls from ethnic, cultural or religious minorities to choose how far to adopt or distance themselves from the dominant culture. The school’s response in this case was, in her opinion, thoughtful and proportionate, as was demonstrated by the fact that some girls had expressed concern that if the jilbab was allowed they would face pressure to wear it even though they did not want to.

#### **A precedent for future cases**

The House of Lords judgment in Shabina’s case created a precedent which had to be followed by the lower courts in future cases. Hence the High Court dismissed similar complaints in two cases after the House of Lords judgment:

- R (X) v Y School concerned a schoolgirl who wanted to wear a niqab veil:  
<http://www.guardian.co.uk/uk/2007/feb/22/religion.schools>
- R (Playfoot) v Millais School concerned a schoolgirl who wished to wear a “purity ring”:  
<http://education.guardian.co.uk/schools/story/0,,2127610,00.html>