

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

Written by Ellis Bezant (Nov 2008)

### Introduction

The Begum case was about a Muslim girl called Shabina Begum who insisted on wearing a jilbab into her school although it was not allowed under the uniform regulations. After two years of wearing the correct uniform she arrived at the school wearing the jilbab accompanied by her older brother and another young man, refusing that she wear the proper uniform as it was against her beliefs. The school insisted that she followed the rules and wore the correct uniform as that was the policy and she was aware of this when she enrolled into the school two years ago, she still refused to do so and told the school she would be suing them for infringement of her human rights. The case went to the High Court where the decision was ruled in favour of the school, which was then appealed by Shabina to the Court of Appeal where the ruling found to be in favour of Shabina. The school appealed this to the House of Lords who finally decided that none of her human rights had been interfered with and that the school had not been unlawful in the exclusion of Shabina.

### Her Argument

Shabina argued that the school uniform was not modest enough to meet the standards of her religion and that by the school not allowing her to wear the jilbab that was seen as the only acceptable thing for her to wear they had taken away her right to manifest her religion. As the school had also disallowed her entry while she was wearing the jilbab this then further meant that the school had violated her right to an education, these were the grounds on which Shabina based her argument.

### The School's Argument

In response, the school argued that the other alternative of uniform was perfectly modest for a Muslim girl of her age. The school had been through a lengthy process of approval for the uniform from many different Muslim sources such as parents, local mosques and members of the Muslim community, all of which agreed that the uniform was acceptable. Also, the way in which Shabina had gone about her sudden change of beliefs was very inappropriate as she has just turned up on the first day back after the summer demanding that she could wear the jilbab, if she had wanted to talk to the school properly about the issue then she should have done so in a more civilised manner at some point during the entire summer that she had changed her beliefs, not only would it have been more polite but the school would probably have been more willing to try and arrange an alternative for her or educate her on other schools in the area that would be willing to take her on with the jilbab.

The school felt that they were not interfering with her right to manifest her religion as the current uniform was indeed sufficient for her to wear whilst maintaining her dignity and she had enrolled to the school completely aware of this uniform policy. If she had wished to wear something that was not included in the school uniform policy then she should have spoken to the school before she enrolled there or if her beliefs had been that strong then she should have not enrolled to that school, of course the right to manifest ones religion means that you should be free to change your religion at any given time meaning that Shabina was fully lawful in her changing of her beliefs but this still does not entitle her to break the rules that her school has made on uniform policies. Parliament delegated the power for the school to be able to decide their own rules about the uniform policy so Shabinas questioning of the uniform policy itself was unnecessary as changing it was beyond her powers. Shabina also claimed that the school was violating her right to an education, this was clearly untrue as the school encouraged her attendance and even sent her work to do whilst she refused to attend, the school also argued that her right to an education never specified the form of education and whether it was at a specific school and she was free to have moved to another school at any time in which she could have worn the jilbab.

### The Rulings

The High Court ruled in favour of the school saying that had not violated any of Shabina's human rights in disallowing the jilbab to be worn so of course she appealed to the Court of Appeal who ruled that the school had in fact breached her human rights by disallowing her to manifest her religion and unlawfully excluding her which in turn took away her right to an education, the said that the school did not deal with her correctly and did not consider her beliefs with the weight that they deserved. The school then appealed against this ruling to the House of Lords where the appeal was granted. The law lords who were hearing the case unanimously agreed that the school was not violating any of Shabina's human rights and that Shabina was in fact at fault for her own loss of education as the school welcomed her to attend in the correct uniform. They also ruled that the school was not being disproportionate in allowing certain religious dress but not others as they had tried their best to please as many different members of the community that would be attending the school as possible, also allowing the jilbab applied pressure to other Muslim girls to wear it even if they did not wish to do so.

### Freedom of expression in a multi-cultural society

You could say that this interferes with Shabina's freedom of expression in a multi cultural society because it means that her decision to wear the jilbab has been compromised by the schools refusal for her to wear it. This means that if she had been forced to wear the alternative uniform then she would have felt indecent and this would have been against her beliefs but by

allowing the jilbab the school felt that they were pressuring those girls who did not want to wear the jilbab into wearing one. Also the jilbab did not reflect the school uniform which the alternative dress did, the schools dress code was about retaining equality for all pupils and allowing the jilbab was likely to cause more hassle then disallowing it had given until Shabina's case. The headmistress of the school, who was a Muslim herself, had said that the uniform that Shabina had worn for the first two years at the school was more than acceptable and that it covered the contours of the female body that Shabina wished to hide with her jilbab. She also said that allowing the jilbab was more likely to cause the formation of cliques in the school, something that there had been problems with in the past. This sort of segregation was more likely to lead to discrimination and divide in the school and as the school was ethnically diverse this seemed a foolish thing to allow for the sake of one girl who was refusing to follow the rules. I do not feel that Shabina's freedom of expression was taken from her in any way as she applied for that school knowing the uniform policy and she was the one who changed her mind, not that school which does not give her the right to change the rules of the entire school. If Shabina had felt that strongly about the situation, which it seems that she did, then she should have changed school as she was fully aware that she was not allowed to wear the jilbab at her school, and if she was worried about her right to an education then she should not have refused to attend the school. It seems to me that she was more interested in making a statement and trying to change the rules then her actual rights to an education being violated.

Speculation could lead you to believe that maybe the whole fiasco was in fact to try and get some money from the school as on the day of her arrival in the jilbab they threatened using her legal rights which shows they had clearly thought about the consequences of this action and what they would do if the school would not allow the jilbab and soon after claimed that they would sue. As her father had recently died it could be seen that she was trying to get some money through the case rather than express her religion as much as she had made people believe, but of course this is just speculation.

### Conclusion

I believe that the House of Lords decision was fair and just and consistent with freedom of expression in a multi cultural society as in the long run, ruling for Shabina would have only benefited her as she was the only one who wanted the jilbab to that extreme and the rest of the school was completely happy with the alternative uniform which gave them sufficient decency to comply with their beliefs. Also, allowing the jilbab would have pressured more girls to wear it even if they feel that they do not want to.