

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

Written by Emily Brooks (Nov 2008)

Introduction;

When considering whether the House of Lords decision in the Begum case is consistent with freedom of expression in a multi-cultural society, it is important to study all sides of the argument. There were many different factors influencing the outcome of the case as well as the attitudes prevalent in society at the time. To fully understand the question first we must study the case itself.

The Begum Case;

In February 2004 Shabina Begum brought forward a case to the High Court. She claimed that as her school did not allow her to wear a jilbab (traditional Muslim garment); they were in breach of her Human Rights. Article 9 states that everyone is entitled to Freedom of thought, conscience and religion, while Article 2 of Protocol 1 states a right to education. After attending Denbigh High School for 2 years, since 2002, Begum began to attend her school wearing a jilbab. This was against the school dress code which had already made arrangements for girls who wished to wear suitable uniform for the Islamic religion. Shabina refused to wear the school uniform and consequently the School Governors did not allow her to be present at Denbigh High wearing the jilbab. She did not attend school for 2 more years until she enrolled at a new school where the jilbab was allowed.

The case was originally rejected by the High Court, but was later brought to the Court of Appeal; at this stage three judges decided that the school was wrong to deny Shabina the right to education or the right to manifest her religious views. They believed that the school had not dealt with the issues properly. And the interference with her religious views was unnecessary and therefore unjustified. The Court however did say that the school could be justified in its uniform policy if it underwent a 'structured reconsideration of the relevant issues'.

Shortly after this the school appealed to the House of Lords. This appeal took place in front of five Law Lords and lasted three days. Both sides agreed that Shabina's manifestation of her religion through her jilbab was justified in her beliefs, and although a jilbab is not seen by all Muslims as a requirement it was for Shabina. Denbigh High School put forward three arguments; firstly that the school did not interfere with Shabina's religious manifestation as she came to the school knowing the uniform policy, and she was free to choose a school originally where wearing a jilbab was allowed. Next; the school's reaction could be justified as when several religions coexist it is sometimes necessary to place restrictions in order to respect others views and beliefs. As well as to stop others from being pressured and cliques being formed. And lastly; that the school did not deny education, as they were not denying her entry to other schools etc. Shabina's representatives then responded with contradictory points on each argument.

House of Lords Decision;

On the 22nd of March 2006 the Law Lords delivered their judgment, finding that there had been no breaches of Shabina's human rights, this meant that the school had won the appeal. On the schools first and last arguments, three of the Lords found that the school had not interfered with Shabina's right to manifest her religion. They used a case law from the European Court of Human Rights in Strasbourg which stated that 'Article 9 does not require that one should be allowed to manifest one's religion at any time and place of ones own choosing' (House of Lords Case Study). This lead them to the decision that there was no breach on Shabina's right to education. While the two other judges felt that there was interference with Shabina's right to manifest her religion. One judge in particular felt that as the child had probably not chosen her own secondary school (in most cases this is usually done by parent or guardian) that it was right to assume that the choices of the child are a product of 'a fully developed individual autonomy'. On the second argument all judges' felt that the school was justified in the way it acted. Especially because the school had taken such measures to ensure that there was a suitable school uniform for Muslim girls. The school also did this in a sensitive and unthreatening way. After this the judges felt that it would be unlikely for another court to overturn their ruling as it was such a detailed and sensitive case. A judge then went into further detail in stating that English society grants equal freedom to men and women, and as the Islamic dress code restricts women far more than men it is unfair and represents inequality. This judge also felt that the school had dealt with the issue correctly, because if they had allowed the jilbab other girls may have felt pressured into wearing it even if it was against their own will.

Human Right Act 1998;

The Human Rights Act was set up in order to ensure that everyone received equal human rights. It plays a big part in the English Legal System and is relevant to the Begum Case. There are a number of different rights all of which people are entitled to. In the case Article 2 and Article 9 are most important. Article 2 of Protocol No. 1 states that no person is to be denied the right to education, and the state must respect education that parents give with children, religiously and philosophically. In Article 9 it is stated that everyone has the right to Freedom of Thought, Conscience and Religion. This includes the right to changes in beliefs, the choice of whether you believe with others or alone, in public or in private, and the right to manifest your beliefs through worship, teaching, practice and observance. The only limitations on manifesting your beliefs are prescribed by law and are necessary in democratic societies.

These Articles suggest that Begum's case would have been won as the school went against her human rights, but as there are certain exceptions and regulations. These may come into place when others views also need to be taken into account, or under special circumstances.

Freedom of Expression in a Multicultural Society;

As England is a democracy it is right to say that everyone has freedom of expression, and this is also true because of the Human Rights Act 1998. In the Begum case the issue concerning freedom of expression was the right of Shabina to wear her jilbab while at school. In this case the girl had already entered the school two years previously with the knowledge of the schools uniform policy. As this uniform policy already had an Islamic alternative which took certain beliefs and traditions into account there should have not been a problem at all. Ultimately whoever chose her secondary school whether it was her or a guardian, should have taken this knowledge into account originally. In 2002 Shabina Begum could have entered into a different secondary school where the jilbab was allowed. In the UK uniform policies are usually used to create equality and by creating a problem with the dress code Shabina was distancing herself from society. The original decision of the High Court would have been the decision she wanted, but would also have been contradictory to some of societies basic principles. For example if a child was to attend school wearing normal dress instead of school uniform, they would not take their school to court, as they are the one in breach of the rules. So the second decision made by the House of Lords was more relevant to society and created a better precedent for further cases. Examples of two of these cases are; R (X) x Y School, concerning a girl who wished to wear a niqab veil. And R (Playfoot) v Millais School, where a girl wanted to wear a 'purity' ring.

Conclusion;

In conclusion I believe that this case was not relevant to freedom of expression in a multicultural society as this particular individual intended to contravene well established rules, designed to promote equality that were already in place within the school. The House of Lords made the correct decision in overturning the original decision. The rights set out by the Human Rights Act 1998 are essential to society and its small exceptions and regulations make sure they function well in society. Freedom of Expression is practiced well in the UK and everyone can have freedom of thought, conscience and religion where appropriate.

Bibliography

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