

“IS THE HOUSE OF LORDS DECISION IN THE BEGUM CASE CONSISTENT WITH FREEDOM OF EXPRESSION IN A MULTI-CULTURAL SOCIETY?”

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FREEDOM OF EXPRESSION is now considered as a right in the United Kingdom. It has evolved from the right of freedom of speech for Members of Parliament in the 16th Century. They are however distinct from the concepts of freedom of thought and conscience. Through years of wars, oppression and an evolutionally change in mentality towards others, humanity has in the last century come to an understanding as to what a human right is. Freedom of expression is especially important in a multi-cultural society. Although to some extent the UK's multi-cultural society has worked, it is becoming ever apparent that tensions between other cultures are rising. In the UK's indigenous culture it is accepted that some aspects of life should be secular such as education, businesses and organisations. This directly clashes with some particular dominations of the Islamic faith. This has led to questions being raised over freedom of expression and its limits. Indeed, freedom of expression can be dangerous. Anything said or done under freedom of expression will always be contradicted by someone else. Depending on what is said determines the reaction of others. Holocaust deniers, pro-fascist believers and racists are just a selection of people that stir up hatred and are vehemently opposed by many. Freedom of expression has also allowed many hate preachers to continue with what they do. This is why there must be lines drawn as to what extent freedom of expression should be allowed in the UK, a supposedly 'multi' cultural society. This should include the respect of aspects of the traditional culture in the UK – secularism within the workplace or non-faith schools. Hence, this essay will argue that the House of Lords decision in the Begum versus the Governors of Denbigh High School case (B) is consistent with freedom of expression in the UK's multi-cultural society.

The Law Lords

A case only gets to the House of Lords after it's gone to the High Court and the Court of Appeals. What is most intriguing about the case are the two quite different views the different courts have come to. The outcome of the case was decided on the interpretation of the Human Rights Act. The case revolved around whether or not there was interference. The Court of Appeals decided the school acted 'unlawfully' while the Law Lords decided to overturn this. Lord Bingham added that the school had 'taken immense pains to devise a uniform policy which respected Muslim beliefs, but did so in an inclusive, unthreatening and uncompetitive way'. He told the court that "the rules laid down were as far from being mindless as uniform rules could ever be. The school had enjoyed a period of harmony and success to which the uniform policy was thought to contribute."

The Human Rights Act, Article 9 states;

“(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.”

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These two phrases of the Human Rights Act dictated the different courts decisions because of the different interpretations of what 'manifest' incurred. The Court of Appeal was ruled by the Law Lords as wrong. Yes, she had the right to freedom of religion, but she could not manifest that freedom in such a way as to prejudice the

school's ability to ensure discipline and order, and to run things in the way it wanted. Indeed, even the European Court of Human Rights has a long-standing tradition of upholding the discretion of educational establishments in matters of dress. Turkey, a Muslim country, banned headscarves altogether not even allowing for the 'Shalwar Kameez', a different styled Islamic body covering. France also has banned the headscarves. Hence, Shabina Begum did not try and overrule the Law Lords ruling in the European Court of Human Rights. France holds secularism in high regard, not just in educational establishments. As a result of religious upheaval, France went into a religious civil war. It retains secularism as a fundamental principle of its society. It is almost certain that if the European Court of Human Rights brought it to court for this ban, it would withdraw from the European Union – such is its passionate reverence of secularism. Consequently, this has meant all European countries are bound to the idea of secularism within their societies. The UK should be no different. All religious garments should be banned in schools. Communities would suffer as a result if people were allowed to express themselves in any way they wished. There would be a two-tier system, one rule for one set of people and another rule for another set of people. There should be one rule for everyone. There should not be two rules, one for those who have a faith and those who don't. This is why (2) describes that freedom of expression is limited to the laws of the country and for public order. The ruling by the Law Lords is not restraining multiculturalism, it is enhancing it. This is why the Law Lords ruling is consistent with freedom of expression in a multi-cultural society.

The Court of Appeals

It seems that the justices in the Court of Appeals have missed these bans and rulings in the European Court of Human Rights. It also seems that the justices in the Court of Appeals have less robust common sense than those of Strasbourg. However, some argue that these judges are not devoid of common sense. They argue that the UK's judges suffer, like other parts of the British Establishment, from a certain leeriness and timorousness about Islam.

Islam is not unique. There are hundreds of religions which 'require' particular garments to be worn. The Court of Appeals decision would have allowed the floodgates to be opened. There would have been no end to people saying 'this is my dress code for what I believe in'. This would have inevitably led to school uniforms becoming defunct. But what is more concerning was the ability for Shabina to be pressured into making a court case. It is hard to know whether it was her thoughts and judgements that made her so adamant in wearing Islamic clothing when the brother of Shabina and his friend were pushing it through the courts. How is it a 14 year old girl had the audacity to go to the highest court in the land? If these thoughts were not her own, and she was being 'made' to pursue the issue through the courts, it demonstrates an ironic violation in her own freedom of expression – to not have the views of others mentally embossed on her.

The reason she wanted to vindicate her right to break school rules, and wear a tent instead of Shalwar Kameez, was to protect - in the word of her lawyer, Cherie Blair - her "modesty". Ms Begum's argument, conveyed by her counsel, Cherie Booth QC, was that the Shalwar Kameez was not modest enough for her and she had to have the right to wear a full hijab. However, it is reasonable to say this case had nothing to do with modesty. Until the landmark decision, it seemed that there was nothing to stand in the way of Islam from saying they were the subject of discrimination. From the moment on September 3, 2002, when Shabina's brother and another man turned up at her school, and told a harassed maths teacher called Mr Moore that their Shabina was going to wear the full jilbab in the name of her "modesty", and that, if they didn't jump to it, the school would be sued, there has been a lack of debate over how far militant Islam can dictate policy in the UK. Especially considering the extremist Islamic organisation Hizb-ut-Tahrir backed a case for breach of her human rights and helped the court proceedings - financially. Hizb ut-Tahrir happens to be an organization that openly supports Al-Qaeda and one that has been banned in a number of countries, though not, naturally, in

Britain. Although the total cost to the Legal Services Commission was £50,000 for all the court proceedings – one can be certain that it cost more altogether.

Indeed, by proposing to force the jilbabbled Shabina on the school, the men were deliberately setting out to undermine the careful compromise uniform that the school had worked out, which was approved by the Muslim Council of Great Britain. Some argue that they weren't even doing it for Shabina; they weren't doing it for the other female pupils; they were doing it to show that they could, and to take another yard of territory in the kulturkampf of modern Britain. All around the UK, in the courts, in the oppressive liberty-destroying Bills being rushed through Parliament, the UK can see the disasters of multiculturalism, the system by which too many Muslims have been allowed to grow up in this country with no sense of loyalty to its institutions, and with a sense of complete apartness. Yes, one may have the freedom to express his or her religious beliefs, but this should not be at the expense of others and the community. The ruling by the Law Lords is not restraining multiculturalism, it is enhancing it. This is why the Law Lords ruling is consistent with freedom of expression in a multi-cultural society.

Implications

The implications for freedom of expression are that one may not wear clothes contrary to the uniform policy of the school not, as some suggest, that all religious clothing is prohibited. Currently when designing a school uniform, a school must make sure it is in line with the mainstream view in that particular religion. The popular view of freedom of expression is that it allows people to dress and speak how they want to. If the Muslim girl was allowed to wear what she wanted – a jilbab – the outcome would mean all schools across the UK would have to revise school uniforms at the very least. This would lead to a systematic breaking of the rules throughout the UK. If one wears a 'punk' outfit to school and says it is his or her religion and something he or she sincerely believes in, would the courts have been so favourable? Or if one wears a Nazi youth outfit to school and says it is his or her belief, should this be tolerated? The answer is no, not just because it is abhorrent, but because it separates that person from the community – it isolates the individual from other people. School uniforms exist because it gives a community identity. Relinquish this identity and people start to look for other means of identifying with likeminded people. It is human nature to feel more comfortable around others who you feel you can identify with. The consequences of this are twofold. First, it isolates groups from other groups and creates 'pocket' cultures – where instead of a 'multi' cultural society, you have pockets of cultures that mix like oil and water. Secondly, it destroys community collectiveness. It simply has gone too far. This is why the Law Lords ruling is consistent with freedom of expression in a multi-cultural society.

To Conclude

In rejecting Shabina's case, the Law Lords have provided a small but important victory for good sense, for British cohesion, and for the right of teachers to run their own schools. It is important that freedom of expression does not mean other human rights are violated. It is important for the UK to not be drawn down with religious issues in different aspects of life. The Law Lords should be satisfied that they have served the UK well in upholding freedom of expression and maintaining our multicultural society. Hence, the Law Lords ruling is consistent with freedom of expression in a multi-cultural society.

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