

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

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The controversial case of R V DENBIGH HIGH SCHOOL, which considered whether the rights of a Muslim schoolgirl named Shabina Begum were infringed, has initiated a number of debatable arguments amongst both religious and non-religious citizens alike. This essay will be discussing to what extent the House of Lords' decision corresponds with the idea behind consistency with freedom of expression in a multi-cultural society. Shabina should have been granted the right to wear her jilbab as part of her uniform, as the freedom to religion and expression cannot be demonstrated in any other fashion.

The two main issues that have arisen in this case are as follows:

- 1-** Denbigh High School's refusal to allow Shabina to wear the jilbab have violated her right to manifest her religion, in accordance to Article 9 of the European Convention on Human Rights (ECHR).
- 2-** The school's unlawful exclusion to allow Shabina the right to education has been breached, in accordance to Article 2 of the ECHR Act. ^[1]

The Human Rights Act 1998

The concept of Human Rights had emerged in December of 1948, after the United Nations sought to promote the principle that all human beings, no matter what ethnicity, gender or country of origin, should have basic and universal rights. Human Rights state that the essential dignity and equality of 'all members of the human family' should be able to have a 'foundation of freedom, justice and peace in the world' ^[2].

Since these rights came into force through Royal Assent in the year 1998, it can be said that they immediately applied to all British citizens in the UK, theoretically making them incredibly advantaged once compared

to countries without them.

Article 9: Freedom of religion.

The two rights which come to question in regards to Shabina's case are the right to freedom of thought, conscience and religion, as well as the basic right to an education. Article 9 of the ECHR Act states that *"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"* ^[1] Through this definition it can be clearly seen that Shabina has not been given the opportunity to exercise her religious beliefs in regards to essentially practicing her faith. Part of the Islamic religion requires complete modesty in terms of dress and etiquette; so Shabina wanting to dress modestly by wearing the jilbab, is merely her interpretation of what is required from her faith. The cause for concern is whether Shabina should have been allowed to wear the jilbab at her school, which was not featured as part of the school uniform policy.

The uniform that was originally approved consisted of a sleeveless kameez (smock-like dress) with a square neckline revealing a shirt collar and tie underneath, and a navy blue shalwar or loose trousers narrowed at the ankles. This form of uniform was specifically created to satisfy the requirement of modest dress. The school governors (many of whom were Muslim) had also agreed on having it. The idea of simply creating a particular uniform on the basis that it would satisfy a religious requirement (which is more commonly evident in Islam than other faiths) comes to surface. The school has allowed a religious requirement to influence and have an effect on an entire student population, regardless of each individuals faith. So why is simply expanding the concept behind the uniform, to a full body lengthed 'kameez' to retain modesty such an issue?

If students were to attend the school campus wearing extremely revealing clothes, it is unquestionably evident that the student would be regarded as 'inappropriately and immodestly dressed'. So why is wearing more modest and less-revealing clothing being considered such an outrage, when public health and morals are not being put at risk? It is understandable that wearing the jilbab can have an effect on other Muslim students in the school, but wearing the jilbab is not a compulsory religious requirement, so pressure to wear it would not be based upon the teachings of Islam.

Religious plurality and multicultural Britain

It can be clearly seen that religious plurality in the UK is constantly increasing, with millions of people accepting and joining a diverse range of faiths each and every day. Whatever religion believed, tolerance has most definitely increased from what it once was. This concept should be acknowledged in Shabina's case, as she is a practicing Muslim who simply wants to dress in accordance to her interpretation of Islam's fullest requirements. Shabina stated that she "thought it would be acceptable to wear (the jilbab) because most people at the school are Muslim"^[3] This is obviously not the case, as it would not have been brought to the courts attention to begin with.

Denbigh High School did not act in accordance to Article 9 in regards to everyone's religious needs in the school, as they have only acted upon an individual rather than all of its students. It could be quite possible that other Muslim learners in the school may have wanted to wear the jilbab, but have felt that their freedom in doing so has been restricted due its uniform policy. So the issue of uniform in itself is debatable as it is forcing many individuals to comply with guidelines that may be contrary to the way they want to dress, which may affect their right to their freedom of expression.

Regarding the faith of Sikhism, if a Sikh student wanted to wear a form of religious clothing, such as a turban, would it affect his/her education? Regarding the faith of Christianity, if a Christian student wanted to wear a habit and a long cloak to emphasise and practice his/her religion, would it affect their education? The answer could be debatable, but I would certainly say no, as what someone decides to wear cannot enhance or worsen one's educational capabilities, as clearly seen in sixth form colleges and universities.

Article 2: Right to an education.

The second right infringed was Shabina not being allowed to attend Denbigh High School unless she was wearing the correct clothing. Under the amended Article 2 of the Human Rights Act, it now also states that *"No person shall be denied the right to education. In the exercise of any functions that 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."*^[1]

This suggests that the right to education shall not be denied, which is exactly what had occurred in Shabina's case. Although the school did not directly imply this denial, it has most definitely been inferred through the encouragement of sending her home, and requiring her to return with her uniform on. This is most definitely an indirect attempt to withhold and deny her educational rights, as she is being somewhat bribed into having to do something in order to gain something else. She has to wear the uniform, in order to gain an education. As previously mentioned, the way in which someone dresses cannot enhance or worsen one's education. If the jilbab she was wearing entailed the necessary school logos and colours, then Shabina's wearing it cannot distract or prevent her peers from continuing with their lessons and education. After all the main purpose of school is to learn and obtain vital and necessary qualifications, not to inspect and scrutinize the appearance and religions of others. In my opinion, it would not have infringed Shabina's right to an

education if they continued educating her through a 'home school' scheme until the case was resolved. But this did not occur, thus making the school liable for rejecting obligatory legislation in regards to Shabina's education.

Conclusion

In conclusion, it can be seen in the opposing point of view that the verdict of the case should have resulted in Shabina being able to wear the jilbab. This denial would have had an incredible part to play in regards to her religious beliefs, and a personal way of self-expression, if she was not to re-enrol in another school. The concept of religion plays a significant role in many people's lives, so being denied the right to comply to one's religious requirements, creates an inconsistency within our supposed freedoms of expression in a multi-cultural society.

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