

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

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### **Essay:**

**Definition:** The term **multiculturalism** generally refers to an applied ideology of racial, cultural and ethnic diversity within the demographics of a specified place, usually at the scale of an organization such as a school, business, neighborhood, city or nation. (*Wikipedia*)

### **Introduction**

The Begum case was about a Muslim school girl called Shabina Begum who attended a school in Luton, Denbigh High School. Here, the majority of students were Muslim and girls had 3 choices of uniform which complied with the Muslim religion. For the first two years at this school, Shabina wore the shalwar kameez but she then decided that the uniform no longer complied with her religious beliefs and she wanted to wear the jilbab. When she came to school wearing the jilbab, she was sent home and asked to change, but after that refused to wear the school uniform and was out of school for 2 years.

### **Brief outline of legal path taken**

In 2004, Shabina brought her claim to the High Court. She wanted the judge to declare that her school was in the wrong and was denying her human rights by not allowing her to wear the jilbab. The judge in the High Court rejected her claims but she then appealed to the Court of Appeal. A panel of three judges decided to overturn the decision made in the High Court and felt the school had breached her right to manifest her religion. After this decision, the school then decided to appeal to the House of Lords and they agreed with the schools appeal and allowed it. So as you can see, the legal appeal system was divided on this case as a whole and it makes you wonder how things would have gone with different judges, as this type of case evokes a very personal and political response.

### **YES; the decision was consistent**

I personally think the final decision made by the House of Lords was correct due to the circumstances. The High Court ruling on the case showed that they may have not agreed with the subject at hand but definitely felt that there was no infringement of Section 9 of the Human Rights Act (1998) which was the declaration that Shabina wanted. Article 9 refers to freedom of thought, conscience and religion. It states:

1. *Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief or freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practise 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 freedom of others.*

The High Court rejected her claim and wouldn't grant her the declaration that she wanted. However, this did not stop Shabina and she took her appeal to the Court of Appeal. This first decision of the court shows how the court believed her human rights hadn't been violated and if Shabina had come to court for a different type of declaration, such as she was being denied her right to education because of her religion then maybe she would have won that appeal.

The judgement that was reached in the House of Lords also shows that they felt that the school had done nothing wrong in the way they treated Shabina. You can see this by looking at the reasons for the five Law Lords coming to a unanimous decision to uphold the schools appeal. Three of the law lords felt that there was no real interference with Shabina's right to manifest her religion because there was nothing stopping her going to a school where the jilbab was allowed and they also pointed out that the article did not refer to one being allowed to manifest one's religion at any time and place of one's own choosing. Thus they concluded that it did not affect Shabina's right to education.

All the Law Lords agreed that the school was justified on how it handled the situation. Two of the lord believed the school to be right as it had obviously gone to immense measures to make sure the uniform was fitting with the Muslim religion whilst doing so in an uncompetitive way as some girls at the school felt that if the jilbab was introduced into their uniform, they would feel pressurized into wearing it. One law lord, Baroness Hale pointed out that in English schools and in general society, they do everything they can to ensure that males and females are treated as equally as possible and by women wearing a garment that conceals everything but their face, hands and feet, while leaving men to wear whatever they want was not equal however you looked at it. She also felt that schools had a general duty to teach social cohesion to their pupils and not to try and section out other religions. I personally strongly agree with Baroness Hale's reasoning and looking at this case, I would in fact come to a conclusion very similar to what she did.

### **The arguments on both sides**

The school put forward the argument that Shabina chose to go to the school, knowing full well the type of uniform that had to be worn and also that in a very multi-cultural society, limitations must be put in place on the freedom one has to manifest their religion to make sure that everyone's beliefs are respected. Also, there was no infringement of her right to education as the right didn't specify a type of education or particular school.

Shabina's representative plainly argued that the fact Shabina was not allowed to wear a jilbab was denying her the right to manifest her religion and that it was unfair that some things were allowed to be worn for religious reasons and not others. Thus, leading to the fact that this exclusion was denying Shabina the right to an education.

I believe that the decision made by the House of Lords was consistent with the term 'multi-cultural' as like Baroness Hale pointed out, her choice of clothing could lead to a more sectioned environment. This was not denying her freedom of expression as she did not have to stay at that school and I also believe that the argument should have been between Shabina and her parents rather than the school. If we all decided to change the uniform we wore, be it for religious reasons or not, the school has the right to say no as they have created the uniform and one student cannot do a lot to change that. I feel that the House of Lord's decision was justified and was made for all the right reasons because of the extensive look to outside factors such as equality.

**NO; it isn't consistent**

At some points in this legal journey, people obviously believed that the decision was not consistent with a multicultural society because in the Court of Appeal the panel of three judges upheld Shabina's appeal. They felt that the school had not taken Shabina's concerns seriously and hadn't gone about their reaction the right way. They must have also seen that her not being allowed to wear the jilbab was an infringement on her freedom of expression and religion. This, in turn also led to her being denied her right to an education because she wasn't allowed to go to school whilst wearing a piece of clothing which had religious significance to her.

It is clear how some people would react to this type of case; some may feel the system was being racist, some may feel it was completely justified and others may be somewhere in the middle. I personally think that the issue about her not being able to wear a jilbab to school is wrong; if that is her religious belief then you can't stop her from practising it. But I feel age played a factor and it hasn't been brought to attention once. At the age of 11, Shabina would not have been mentally fully developed and her parents would have probably chosen the school for her. At 13, her personal beliefs may have developed but still, at the age of 13 she still could change her mind through the course of her adolescent years.

**Conclusion**

In the above essay, I have explored whether the House of Lord's decision was consistent with a multicultural society and all the factors which come to the surface in this case.