

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

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Introduction

The Begum case is certainly highly controversial. It seems, for the purposes of this case, that freedom of religious expression in a multicultural society is based around Article 9 of the European Convention of Human Rights. There are a number of arguments, both for and against Shabina Begum's case which relate to the right to freedom of multiculturalism in the United Kingdom. The case, therefore, is very well related to the notion of multiculturalism.

What is freedom of expression in a multicultural society?

In all three courts – the High Court, Court of Appeal and the House of Lords – the cases were centred on two Articles from the European Convention on Human Rights. This would suggest that freedom of expression, in particular religious expression, in the United Kingdom is synonymous with the European Convention on Human Rights.

The Case focused on articles 2 (of protocol no.1) and 9. Article 2 states the right to education and is hence less relevant to this particular case. Article 9 is more appropriate because it sets out the rights for freedom of thought, conscience and religion. It reads:

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, 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 freedoms of others.*

Whilst there are doubtless other contributors to freedom of expression, article 9 would seem the most appropriate base for this idea.

In which ways, if any, did Shabina's treatment contravene the part one European Convention on Human Rights? What did this show of freedom of thought and religion in the UK?

Section one of article 9 sets out the key points for freedom of religious thought, and Section two focuses more on situations in which this right may be subject to limitations. Both sides argued, in the House of Lords, over both parts of the article. The point that Shabina's rights - as set out in part one – are limited in some way is a

strong one. Two law lords, Baroness Hale and Lord Nicholls agreed that Shabina's rights had been interfered with.

The key part of part one of article 9 appears to be: "*Everyone has the right...to manifest his religion or belief, in worship, teaching, practise and observance.*" Many would agree that because Shabina was not allowed to attend school because she was wearing a Jilbab – an Islamic gown – that her right to observe what she saw as the requirements of her religion were interfered with. There can be no doubt that she was not able to wear the Jilbab at the school she attended. Shabina and Cherie Booth QC argued that this was an interference with her right.

Along with Baroness Hale and Lord Nicholls, the Court of Appeal agreed that Shabina's right to manifest her religion and, in particular, observe it was interfered with by the school. The Court of Appeal panel decided that the school had dealt with Shabina's concerns incorrectly, and that they had failed to give her Islamic beliefs the influence that they should have held. It is indeed arguable that her beliefs were more important than school uniform rules. It seems narrow-minded and officious to deny a girl the right to manifest her religion because it went against dress code rules for a school. In overview, it may seem disrespectful to the importance of religion and Shabina's own wish to adhere to the strict necessities of the Islamic faith. Cherie Booth argued that the school was effectively forcing Shabina to "act in a way incompatible with her religious beliefs".

These arguments are well based and certainly not weak. Upon this evidence, one could conclude that Shabina's right to manifest her religion had been interfered with. This would in turn render the decision of the House of Lords somewhat incompatible with the notion of freedom of religious thought as a part of multiculturalism in the United Kingdom. However, there were counterarguments.

In which ways could the idea that Shabina's rights had been interfered with have been disproved?

Lord Bingham, Lord Hoffman and Lord Scott all agreed that there was no interference with Shabina's human rights. There were a number of reasons for this decision.

Firstly, Shabina could have attended another similar school in the area at which Jilbabs were allowed. Surely this is an example of religious freedom being offered in a multicultural Great Britain, where education can be tailored to one's exact religious needs and requirements. Neither parts of article 9 specify that anybody may manifest their religious beliefs as and when they wish, and so there was no reason for the school to allow Shabina to wear a Jilbab for her education. It is worth bringing to light the fact that religious freedom to observe one's religion at any time or place is largely allowed in Britain anyway, even though it is not specifically part of the European Convention on Human Rights, or any other law.

Shabina's school's efforts to provide for the Islamic majority at the school ought to be taken into account too. Denbigh High School allowed girls to wear a Shalwar Kameez – a purpose-designed uniform aimed at satisfying the requirements of the Muslim

faith. Shabina chose the school knowing full well its uniform policy. Therefore Shabina had chosen against the right to wear a Jilbab herself.

These two arguments would seem to show that there was a perfectly good chance for Shabina to attend a school which would have allowed her to wear a Jilbab. She was well within her rights to leave the Denbigh high school for another local school more suited to her religious preference. Not only does this show that there was little real interference with Shabina's right to manifest her religion, but in general the United Kingdom does provide for multiculturalism.

If there was any interference with Shabina's human rights, were they justified? How did this reflect on the freedom of thought and religion in the UK?

Part 2 of article 9 of the European Convention on Human rights states that "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."

There was argument in the House of Lords case over whether the interference to Shabina's human rights was justified or not. Again, this part of the European Convention on Human rights is very closely linked to freedom of expression in the United Kingdom.

The argument of the school seemed fair on this issue. The school argued that in order that Shabina's beliefs be respected she was not allowed to wear the Jilbab because if girls did, cliques or groups may begin to form. This would increase racial tensions between students. A stronger argument was that Muslim girls who didn't wear a Jilbab may feel pressurised to do so. The school's point of view was that they were merely protecting the rights of the other students.

It could therefore be said that the school were therefore acting in the interests of multiculturalism and harmony between groups of children. Lord Bingham and Lord Hoffman agreed that the interference was justified. They were happy to acknowledge the school's considerable efforts to act in favour of freedom of thought (in creating the Shalwar Kameez uniform) and they realised that the school would be far more knowledgeable in the area of understanding of how the various different social groups in the area than the court was. The judges in this case displayed tolerance of freedom of thought in accepting the importance of keeping harmony between religious groups and stopping specific Jilbab-wearing groups being formed.

In this particular case the argument of Shabina's side focused more closely on the technical details of the school's uniform policy. They claimed that it was unfair to distinguish between Headscarves and Jilbabs as Headscarves were allowed and Jilbabs weren't. Surely if the wearing of Jilbabs could lead to the beginnings of cliques then Headscarves would too?

This was a valid point but it was less relevant to the idea of religious freedom and multiculturalism in the UK. It seems that the view of the House of Lords was that in the interests of preserving religious freedom and multiculturalism in Britain they

should follow the expertise of the school. This doesn't sound like they were keen to disregard the ideas of religious equality, it sounds like they were acting to preserve it.

Conclusion

In conclusion, the evidence of the case would point towards the fact that the Judge's of the House of Lords were very careful to act in the interests of freedom of expression and religion in a multicultural society. The Judges followed the European Convention on Human Rights to the word, using it as a base in deciding whether Shabina's rights had been denied. The European Convention on Human rights was set out to protect human rights and, in the case of Article 9, to protect religious freedom, so if the House of Lords found no fault with the school's actions under it then surely this was entirely consistent with the aims of the European Convention on Human Rights. Similarly, they respected the understanding of the school in matters of religious disagreement on a local level. They acted in the interests of multiculturalism and freedom of thought in deciding that they should leave it to the school to ensure that religious equality was kept, and cliques could not be formed. Therefore, I believe that the decision in *Regina (SB) v Governors of Denbigh High School (2004)* was fully consistent with freedom of expression in a multicultural society.