

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

Written by Rachel Arkell (Nov 2008)

INTRODUCTION:

In 2004 a case was brought forward to the High Court regarding the 'violation' of a teenage girl's human rights by her secondary school. The claims were brought forward after Denbigh High School refused to let Shabina Begum, a Muslim schoolgirl, wear a jilhab rather than the usual school uniform. The claimant brought forward the view that due to the restriction of the uniform options, this violated her rights under the Human Rights Act. However in the school's defence they had given the students 3 uniform options deemed acceptable by the school governors (many of whom were Muslim). The school in question had also explained the uniform options, in full, to prospective parents/ students.

In this essay I will be exploring all the possible outcomes of the case and whether the claims brought forward by the claimant do go against her freedom of expression in a multi cultural society. I will also be looking at similar cases to help come to a conclusion.

THE CLAIMANT'S VIEW:

As previously mentioned the student claimed that the school had violated her rights under the human rights act. She claimed that her freedom of thought, conscience and religion and her right to education. In my opinion I am not quite sure how the situation affects her freedom of religion. When Shabina returned to the school wearing a jilhab instead of one of the three approved uniform options, she was asked to return home and change. Shabina was not admitted back into school whilst wearing a jilhab, therefore she was out of school for approximately two years. By not being in school I understand how it is affecting her right to education, however I don't agree that it is affecting her freedom of religion as the three uniform options were approved by the Governors (many of whom were Muslims) and it was deemed acceptable by the claimant herself for two years before the case; so why the sudden change now. The student claims that the approved uniform was not appropriate for a girl who has reached the age of puberty, however she was the only girl who expressed her opinion on this matter.

Recently there has been another publicised case that can relate to this situation: R (on the application of Watkins- Singh) v Governing Body of Aberdane Girls' High school (2008). Even though the outcome of this case hasn't been decided yet, the principles and main points are the case are extremely similar. The claimant is a teenage Sikh girl who wears a Kara (a silver bangle) and she feels that wearing a Kara is a religious observance as a Sikh. When the student was asked to remove her Kara she refused and the Head teacher referred the matter to the school's governing body who then refused the claimant to wear a Kara. The student then applied for judicial review and the verdict is still pending. In

the mean time she has been suspended from her school, so she is being taught at a different school; however the claimant would like to return to her old school if she could wear a Kara. In this case the defendants are claiming that the claimant cannot wear her Kara due to health and safety reasons; this is wear the case differs from the Begum case as it is for health and safety reasons whereas the Begum case argues that there are perfectly acceptable options and that they explained the options before the claimant came to the school and if she/ her parents didn't accept the options then she shouldn't have gone to that school. The interesting part of the R v Governing Body of Aberdane Girls' High school (2008), in my opinion, is that they are considering the Begum case when deciding on a verdict and because it is different to the case, it can be used as a persuasive precedent as it tackles some of the same sort of accusations i.e. it goes against her freedom of religion.

THE DEFENDANT'S VIEW:

As mentioned before, in the school's defence they had given 3 uniform options deemed acceptable and had explained in full, the uniform options to all prospective parents/ students. Also the claimant had worn one of the approved uniform for the past two years. In addition the claimant states that prohibiting her to wear a jilhab it goes against her freedom of religion, however that right 'may be subject to limitations such as are "prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others"'. I think that these limitations work as an advantage to the defendants because according to some of the female pupils attending the school, if the jilhab was introduced as a uniform option then some girls would feel pressured into wearing them even if they didn't want to. Therefore by prohibiting the jilhab as a uniform option, it is protecting the rights and freedom of others.

When deciding the verdict for the Begum case, the judges considered the case of Sahin v Turkey (1998). Even though the case was in Turkey, the judges used it as a persuasive precedent as Turkey held democratic values similar to Britain. The principles of the case are very similar to those in the Begum case as they both are arguing about the prohibition of wearing headscarves. In this case The student had been wearing a headscarf to the University for some time, but when a notice from the vice chancellor, circulated the university of Istanbul any students wearing a headscarf would not be admitted to any exams and/ or lectures. The student complained to the European Court of Human Rights under article 9: The right to manifest her religion. In march 1999, the application was dismissed holding that under section 13b of the higher education act, a vice chancellor 'as the executive organ' of the university had the power to regulate dress code to maintain order. In my opinion this is extremely similar to the limitations of the right to the freedom of religion, as the vice chancellor had prohibited the wearing of headscarves to protect the minority, as the majority of students were Muslim; it was felt that the majority would pressure the minority. In my opinion I

don't agree with the outcome of the Sahin v turkey case as I feel that the majority would not pressure the minority and that the dress code should accommodate the majority. However I can see the logic behind the dress code as it shouldn't be in favour/ discriminate any group of people.

THE VERDICT/ APPEALS:

When the begum case went to the High court it was rejected on the basis of the limitations of her human rights. Personally, I agree with this ruling that that Shabina was perfectly aware of the uniform options before she came to the school, so if she didn't not feel that the uniform options were appropriate she could have attended a different school. However Shabina did not find the rulings in the high court acceptable so she appealed to the Court of Appeal, who overturned the past decision and ruled with Shabina. However there was yet another appeal, this time to the House of Lords where there was a panel of five Law Lords, however the judgement was not completely straight forwards, there was a majority decisions: 3 Law Lords against 2, and it was decided that there had been no violation of Shabina's human rights. The two dissenting judges took the opinion that the parents usually pick the secondary school for their child and so Shabina would not have necessarily thought that the uniform was acceptable. However I disagree with the dissenting judgments as if Shabina truly disagreed with the uniforms, and coming from a traditional Islamic family, she should have addressed the problems to her family and coming from a traditional Islamic family they should have sided with her that the uniform is not appropriate for a girl who has reached the age of puberty.

Overall I agree with the end decision and that she should have considered the uniform options before she/ her parents chose for her to attend the school. In my opinion Shabina should have just left the school if she felt that the uniform no longer accommodated her individual religious views/ opinions.

CONCLUSION:

In conclusion I don't think that the decision reached in the Begum case violated the claimant's rights laid out in the human rights act. I think that the school had done all it could to accommodate the needs of the high population of Muslims in the area of Luton. In addition I feel that in order to avoid problems that could arise (such as the problem in the Begum case), the governors/ head teacher had done all they possibly could; such as give alternative options and give plenty of warnings and explanations to all prospective parents. I also feel that if Shabina had a problem with the uniform before she entered the school she should have told her parents, even if they wanted her to go to the school. Again I feel that the school did its best to protect the freedom of the student's as a whole, rather than one individual, as previously mentioned it became aware that some of the female pupils would feel pressured a jilhab if it was made a uniform option even if they didn't want to wear it.

However in the matter of whether it affects her freedom of expression in a multicultural society is very different. In one way it doesn't affect her freedom of expression as by wearing the other uniform options she can still freely express her religious views and yet still comply with the school's uniform policy. But on the other hand it does affect her freedom of expression as she cant express he full opinion on the matter as the uniform policy restricts her from doing so. Bearing all this in mind I do not think it affects her freedom of expression, as if she feels so strongly about this matter; which she clearly does, she can also change to a different school which can accommodate her religious needs and let her express her religious opinions. Also I feel that the decision also protected the student body's freedom of expression as well, which is worth the cost of loosing a student from the school.