

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

Written by Chelsea Render (Nov 2008)

Introduction:

In the case of '**R v Governors of Denbigh High School**' the House of Lords dealt with the important and sensitive issue concerning 'freedom of expression' in a 'multicultural society'. Freedom of expression is being allowed to voice your views and opinions without being criticised or prevented from doing so and this was argued in the case as Shabina Begum believed this was breached as well as her right to an education. In Britain today, we live in a multi-cultural society, meaning many different cultures co-exist with one another. The right to freedom of religion includes the right to "manifest" one's religion in "practice and observance" but that right may be subject to such limitations as are "prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others"., meaning that in order to satisfy all cultures, some may have to be limited so all can live peacefully together and not to offend others. In this essay I am going to be examining these points as they are the main focus of this case and I will also discuss whether I believe the correct decision was made or not.

The Begum Case:

The case arose when Shabina Begum, a Muslim schoolgirl decided that instead of wearing one of the three school uniforms of shalwar kameez, she would wear a jilbab. The school governors, mostly made up of Muslims, approved the kameez as a suitable uniform for Muslim girls as well as also being allowed to wear a matching headscarf. After two years of complying with the school uniform policy, Begum decided to wear a jilbab and was consequently sent home and excluded for breaching school uniform rules. Because of this exclusion, Begum decided to take the case to the High Court where the court rejected her claim. She then appealed to the Court Of Appeal who overturned the judge's decision. The school then appealed to the House of Lords who as a result of a three day hearing rejected Begums claims and voted in the schools favour as Begums human rights had not been violated. The House of Lords raised many points to do with freedom of expression and human rights. There were some points raised by two of the five Law Lords which I particularly agree with.

Lord Bingham and Lord Hoffman

When debating whether or not there was interference with Shabina's right to manifest her religion and her right to education, the two Law Lords, along with Lord Scott decided that there was no interference as there was no evidence to show that there was difficulty in attending another school which

allowed the jilbab to be worn. Here they also referred to Article 9 of the 'Human Rights Act' which does not require that a person should be allowed to manifest one's religion at any time and a place of one's choosing. This meant that although she should be allowed to follow her religion at all times, in order to satisfy the multi-cultural society, she cannot always follow it as how she may want to, the majority must choose. In this case, this was shown as many of the governors were Muslims and they decided that the shalwar kameez was sufficient to follow the religion. Another valid point made by the school governors was that a lot of Muslim girls said that they would feel uncomfortable and pressurised into wearing the jilbab when they were quite happy to wear the shalwar kameez. This shows that the majority of Muslims in the school were contempt with the schools efforts to satisfy Muslims clothing, as they went out of their way to do so, and it was the minority, in this case, Begum, who decided after two years of wearing the school uniform to rebel and wear the jilbab.

Another valid point to discuss that was made by the two mentioned Law Lords regarding the interference and if it was justifiable. They believed that the school was fully justified as they made the effort to adapt the school uniform to comply with Muslim clothing beliefs and also in a way that did not threaten or compete with other religions in a multi-cultural school which complies with the **'Human Rights Act 1998'**.

Points raised in the case:

There were also some valid points made by both sides which made the case even harder to judge, as it did involve a young girls human rights. The points made by the school governors were that Begum chose the school knowing the uniform policy and could have easily gone elsewhere to another local school which allowed the wearing of the jilbab. Another valid point was that in democratic societies, where several religions co-exist, in a multi-cultural society, which Britain is, it is sometimes necessary to place restrictions on freedom to manifest one's religion or belief in order to ensure that everyone's beliefs are respected. Finally they also argued that there was no denial to the right to education either. On the other hand, Begum also presented some very valid arguments. It was argued that the schools refusal to let her wear the jilbab interfered with her right to manifest her religion and that there was no justification for the interference. Also they claimed that her human rights had been breached as the unlawful exclusion prevented her right to an education.

Article 9- The right to freedom of thought, conscience and religion:

In Article 9 of the **'Human Rights Act 1998'**, we are told that rights of religion can be limited in a democratic society as it is necessary to protect the rights of individuals in other religions. As the power of deciding school uniform policies rests with school such as Denbigh high School, they have not acted improperly. This is because of the fact that the governors went out of their

way to provide a variety of uniforms to suit different religions in a multicultural society. It was because one individual decided that she wanted to follow her religion more closely than other students at the school that the problem arose and other female Muslim students, when asked, expressed concern over the wearing of the jilbab as they would feel pressurised to wear it even though they did not want to. Shabina joined the school and accepted its school uniform policy and then later changed her mind, however, it is peoples own interpretation of Article 9 as to whether it is within her rights to do this. From what the article says I believe that this was not within her rights as the school already provided a uniform, which she accepted but for no apparent reason, after two years of complying with the uniform policy, she decided to change her mind. In Article 9 although it does state that people have the right to religious freedom, it also states that it is limited by law in order to maintain a safe society and to protect the rights and freedoms of others. As the House of Lords followed the regulations set in Article 9, they therefore did not discriminate against her beliefs as the school did provide suitable clothing to suit her religious needs and were also able to protect others religions without offence. The decision by the House of Lords does still allow individuals the freedom to express what they want given that we now live in a society of many cultures as the shalwar kameez was still allowed and this allowed Muslims to follow their religion without offending others which may also be followed In Denbigh High School. Finally, the Law Lords were right to override the wishes of strict religious people who want to wear the jilbab, but accept the majority viewpoint of the more liberal who believe that the shalwar kameez is enough. This is because by following the majority, most peoples religious needs are fulfilled and in this multi-cultural society, we must respect all other religions apart from our own and the minorities views may offend others and therefore breach Article 9 of the **'Human Rights Act 1998'**.

Article 2 of Protocol No.1 – The right to education:

This article states that 'no person shall be denied the right to education' which in this particular case did happen. Also the article states that ' the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions' and as it is usual that the parents choose the secondary school which their child goes to, the school did not breach this rule, as it was down to the Shabina's parents to have chosen a school where all her religious needs could be fulfilled as other local schools allowed the jilbab, whereas Denbigh did not, but still did offer a choice of three uniforms to comply with the Human Rights Act. As the Law Lords concluded that Shabina was not unlawfully excluded because of her beliefs, I also agree with this decision as they put forward a good argument and everyone else at the school complied with uniform regulations apart from her and if correct procedures

were followed all the time, then any other student who did something similar would have faced the same consequences.

Lord Bingham and Lord Hoffman's judgement:

I particularly agreed with the above named Law Lords' judgement as they concluded that there was no interference with Shabina's religious rights as there was no evidence to show that there was any real difficulty in her attending one of the other schools where the jilbab was accepted. Another valid point which I agreed with was that the school was justified in acting as it did if there was any interference as they took the time and effort to devise a uniform policy which respected Muslims beliefs in an 'inclusive, unthreatening and uncompetitive way'. This way they complied with human rights as well as peoples own individual religious beliefs.

Conclusion:

In conclusion, I believe that the correct decision was made by the House of Lords. The judgement made by Law Lords Bingham and Hoffman were similar to the opinions I have which is why therefore I agree with the final decision made. I also feel that the House of Lords decision in the Begum case was consistent with the freedom of expression in a multi-cultural society. This is because it complied with human right rules and also took into account the efforts that the school had taken in order to do so. Also, not everyone can be pleased all the time and it was obvious that Shabina could have easily have gone to another school where the jilbab was allowed, however, she chose to go to Denbigh High School and complied with uniform rules while there until after two years she changed her mind. This is why I believe the right decision was made as suddenly after two years Begum decided to follow her religion more strictly and as a result breached school uniform rules. Because of the effort the school had made to comply with human rights and to please students from all cultures, I think it was unfair of Shabina to suddenly change her mind and 'rebel' against the school, and she therefore may have breached human right rules as she may have offended other cultures in a multi-cultural society by choosing to wear the jilbab. Another point is because the school gave three options to suit the needs of different religious groups, Shabina had little need to extend on this by wearing a full dress, where Muslim governors on the school governing body found that the shalwar kameez was sufficient for the wearer to follow their religion. Therefore I believe that the House of Lords decision was consistent with the freedom of expression in a multi-cultural society as it complied with human rights and Shabina Begum was not unlawfully excluded due to her beliefs and the school did not interfere, but if they had they would have done so in a justified way.