

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

Written by Andrew Voneshen (Nov 2008)

The case of Shabina Begum was indeed an interesting one for British Law. It focused on the contradiction between what a school had deemed to be suitable uniform for its students on the basis of lengthy consultation and informed debate and decision making. However the disagreement of one student with this led to an interesting legal case that raised greater questions about society and the acceptability of religious and personal beliefs of the individual among a consensus of those who were against it.

Shabina had been going to Denbigh High School in Luton for 2 years prior to the case. The schools uniform policy was designed to be acceptable to Muslim girls and the governors who decided on the uniform policy were in fact Muslims themselves. The options for girls included a specially designed uniform featuring a shalwar kameez and girls were allowed to wear a navy blue headscarf as well. However, after two years Shabina decided that she was not happy wearing this and instead wanted to wear a Jilbab as among a minority of Muslims it is held that it is the only way to conceal a girl's modesty during adolescence. However, the school decided that a Jilbab was not acceptable, and when Shabina arrived wearing one at the start of her third year, in September 2002, she was asked to go home and change by the deputy head. Shabina refused and although throughout the next two years the school attempted to provide her with some education she refused to not wear the Jilbab to school and only when another school accepted her where they allowed the students to wear a Jilbab was Shabina able to continue her education.

In February 2004, Shabina took a claim for judicial review to the High Court, asking that there should be a declaration that refusing to allow her to come to school in Jilbab was a violation of her human rights. She claimed the school had violated her right to freedom of thought, conscience and religion as well as her right to education. Part of the right to freedom of religion involves the right to "manifest" religion in "practice and observance" but importantly the right may be limited according to the law and limitations "necessary in a democratic society for the protection of the rights and freedoms of others".

Although the High Court rejected the claims, she won on appeal and the judge's decision was overturned. The Court of Appeal decided that there had been breaches on her rights to manifest her religion and right to education. The schools denial of her right to manifest her religion was unnecessary. Her choice to change halfway can be shown by Article 9 of the Human Rights Act 1998:

"Everyone has the right to freedom of thought, conscience and religion; this right included freedom to change his religion or belief and freedom, either alone or in the community with others and in public or private".

This would mean that her decision to decide that the Shalwar Kameez was justified as a change in religion or belief according to the act. However, Article 9 also states that:

“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”.

Denbigh High School appealed to the House of Lords, where it was decided that the school was in fact correct to not allow Shabina to wear the Jilbab, but although there was unanimous agreement from the five judges it was, in fact, for different reasons. Lords Bingham, Hoffman and Scott all decided that because there was choice of other schools in the area which did allow the Jilbab that Shabina was not being denied education. Also, article 9 does not require manifestation all the time. Baroness Hale and Lord Nicholls looked at whether there was an issue in manifestation of her religion.

All of the Lords agreed the schools action were justified. Lords Bingham and Hoffman decided that the school had taken action to ensure the uniform was acceptable as well as the fact that having no experience in the field that they were ill-suited to overrule the judgement of an experienced body of teachers and governors. Baroness Hale concluded that “English society is committed in principle and in law to equal freedom for men and women” and that different dress codes for men and women did not support this. Also, the school was responsible in its uniform by not coercing younger girls into wearing the Jilbab.

Multiculturalism and The Case.

An interesting part about Shabina’s case was that the Lords chose to ignore the general religion and focus solely on Shabina’s beliefs. However, the fact that wearing a Jilbab was not a consensus among Muslim girls meant that the wider beliefs of society eventually prevailed against Shabina’s personal ones. Some might argue this is due consideration along the lines of Baroness Hale’s argument that it is important to let the younger girls make up their own mind, whereas others might argue this is suppression of the person beliefs of Shabina in order to make life easier for the others; but even if this is true then it is within the schools rights according to the judgement.

The problem with the case is the fact it took place in a school. Children are incredibly easy to influence so due consideration is indeed needed to ensure they are allowed to make up their own minds at a crucial time of their lives. But at the same time cultural beliefs and differences can be as important as discipline and organisation within a school, arguably more so as they can reflect wider society. The Fact that in this case Shabina was the only one of a small minority willing to go to extreme lengths for her beliefs is indicative of the environment in that school. Another factor is that she chose to carry on at the school, despite her new beliefs, at the beginning of a new school year when it may have been easier to immediately enrol at either of the two other schools which would likely have a higher proportion of students wearing the Jilbab as well as tolerating and allowing it. I think that this ruling reflects the views of wider society in the UK, where the needs and wants of the masses can lead to the law favouring the majority. Although there is provision in wider society for the acceptance of the Jilbab, schools are run differently to other organisations due to youth so

of course there will be differences. Because of Baroness Hale's judgement especially, disruption can be seen as removing the "rights and freedoms of others" to a much lesser extent as can be seen in other girls feeling pressured into wearing the Jilbab.

If for example this had occurred in a large company without specific rules for dress codes that had been an important part of said company like uniform is in this example, it would of course be different. But the important fact is choice. Freedom of expression is different to breaking the rules in a similar way that freedom of speech is not the right to say whatever you wish – it may be offensive, it may cause trouble. This leads back to Article 9 and the fact that even freedom of expression should be subject to reasonable limitations. The main point here is that expression by wearing the Jilbab was likely to cause issue for the other students, therefore causing interference. This, along with the fact that Shabina had choice is obvious that there was no denial of her rights but there were the wishes of the school who chose to operate that way. In Article 2 of protocol number one, it states that:

"No person shall be denied the right to education. In the exercise of any functions which 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".

If the beliefs were that profound, there was the option to send Shabina to another school providing the necessary options and this was the course of action eventually taken.

Conclusion

Ensuring fairness and justice for all in a multicultural society is by no means an easy task. The very nature of multiculturalism means that there are always going to be conflicting views and beliefs operating within the existing system already present in a country. It is up to the Justices of the land to enforce and reassure the population that there is fairness and impartiality as well as justice for individual issues. Ultimately the rules of the state have the final say by tolerance and respect are the cornerstones of modern society. I believe that the Lord's decision is consistent with freedom of expression, in modern Britain. They comply with European law and the basic principles of human rights. The decision was made not just for Shabina but for the school as a whole and I believe it was made in respect of her fellow students in order to allow belief to be a personal issue in the school.

Bibliography:

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<http://www.guardian.co.uk> and their coverage of the case and the result.