

The legal regulation of Muslim dress is controversial in the UK, but education could help eradicate prejudice

By Democratic Audit

*Segments of British society continue to feel uneasy about the idea of Muslim religious dress, particularly when it concerns the covering of women's faces. The recent debate triggered by a Birmingham court's introduction and then reversion of a ban on defendants wearing the veil presents a meaningful opportunity for non-Muslims to learn about the significance of religious dress to Islam, argues **Claire Overman**.*

Muslim dress has featured heavily in the British media of late. Birmingham Metropolitan College [instituted](#), then [reversed](#), a ban on veils. A Crown Court judge has [ruled](#) that a defendant must remove her veil when giving evidence in court. Home Office minister Jeremy Browne has called for [national debate](#) over whether the state should step in to protect young women from having the veil "imposed" on them. If such debate is to occur, a useful starting point will be to see how Muslim dress has been treated so far in the British courts.

The right to manifest one's religion is protected by the European Convention on Human Rights, [Article 9](#), which states:

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, and to manifest his religion or belief, in worship, teaching, practice 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.

This Article is incorporated into UK law by the [Human Rights Act 1998](#), Schedule 1, and therefore the courts must uphold it. It should be noted however that, while the freedom to have a religion or belief is absolute, the freedom to manifest this religion (for instance, through religious dress) is expressly restricted by Article 9(2). Any restrictions must comply with the conditions set out in that paragraph. At domestic level, the [Equality Act 2010](#) also provides protection for individuals wearing religious dress.

Domestic court decisions on Muslim dress have focused on two main areas: courtrooms and schools. As mentioned above, the most recent decision regarding Muslim dress has held that the niqaab, the face-covering veil, is not to be worn by a defendant when giving evidence in a criminal trial. While the judge acknowledged the defendant's right to manifest her religion under Article 9 ECHR, he accepted that a limitation on that right in the courtroom satisfied the requirements in Article 9(2). This was for two main reasons. First, the alleged victim had a competing right: the right to a fair trial, guaranteed by Article 6 of the European Convention. This right would be violated where a judge and jury were not able to observe the defendant's reaction under cross-examination. Secondly, if a defendant were able to assert the right to wear a niqaab during her trial, this would deprive the court of control over its own procedure. In order to protect the principles of law on which the court's processes are based, the defendant's right would therefore have to be limited.

The garment at issue in the case of [R \(Begum\) v Governors of Denbigh High School](#) was the jilbab, a long coat-like garment which effectively concealed the shape of the female body. In this case, the school, 79% of whose students were Muslim, had agreed with parent committees and religious experts on a school uniform appropriate for Muslim students. The complainant, a student, wished to wear the jilbab, which was deemed a more restrictive form of dress. The school refused to accede to her request. In upholding the school's appeal, the House of Lords advanced differing justifications. The majority did not even consider there to be an interference with the student's right to manifest her religious belief, as her sister had adopted the school's uniform without problem and the student herself, who had originally worn the uniform without complaint, was free to apply to a different local school in which the jilbab was permitted.

However, the judges were unanimous in holding that even if there had been interference, it was justified under Article 9(2). The school, having ensured that its uniform policy was acceptable to mainstream Muslim opinion, was entitled to uphold it, and there was a fear that allowing one student to wear more conservative dress would pressurise other Muslim girls to do the same. Interestingly, this case was distinguished in [R \(on the application of Watkins-Singh\) v Aberdare Girls' High School](#), a case which concerned the wearing of a kara, a thin Sikh bangle. In that case, it was stated that, as the kara was much less ostentatious than the niqaab or jilbab, it would be unlikely to disrupt the sense of community fostered by the school uniform, or to make the pupil stand out. Therefore, the pupil was entitled to wear it with her school uniform.

From these cases, there is a sense that Muslim clothing is seen as divisive. This may be between Muslim females themselves, who interpret the dress requirements of their religion in more or less conservative ways, or between Muslims and non-Muslims. There is also a suggestion that it can be seen as repressive of women. This line of argument was criticised in *R v D*, in which the judge pointed out that 'the niqaab is worn by choice by many spiritually-minded, thoughtful and intelligent women, who do not deserve to be demeaned by superficial and uninformed criticisms of their choice.' However, on the facts in *Begum*, there appeared to be a suggestion that the student, only a teenager at the time, may not have made the choice to adopt the jilbab entirely freely. Nevertheless, it is interesting that other forms of religious dress have not come under the same kind of scrutiny. For example, there is no popular outcry that young Sikh men are pressured into wearing the dastar, the Sikh turban.

If it can be accepted, as *R v D* shows, that there are instances in which there are sound practical reasons for the removal of the veil, the question is therefore whether there is any wider justification for the state to regulate Muslim dress. One particular danger is that the arguments advanced in favour of intervention are based on ignorance or prejudice. For instance, one argument often seen for the restriction of Muslim dress is that the difficulty of interaction between a veiled woman and other individuals causes divisions within society. However, the question which then arises is why it should be Muslims who alter their practices. If national debate on the issue is to be had, it could in fact provide a marvellous opportunity for non-Muslims to learn more about the significance of religious dress to Islam. Fostering community relations and diversity need not mean the enforced banning of all religious dress, or worse still, only that which we find offensive, but could equally be achieved by the permitting of all kinds of dress, and an emphasis on educating the public about the meaning behind it.

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