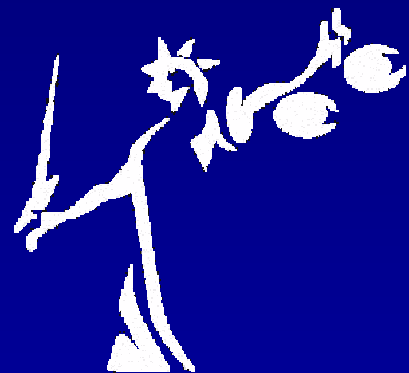


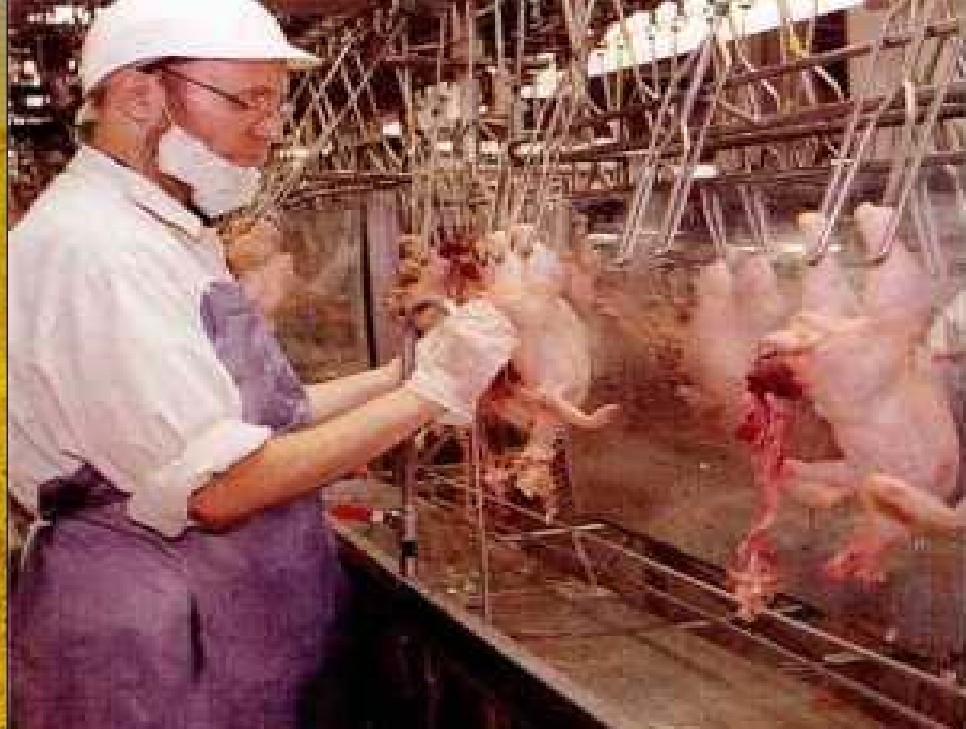
# Freedom of Religion

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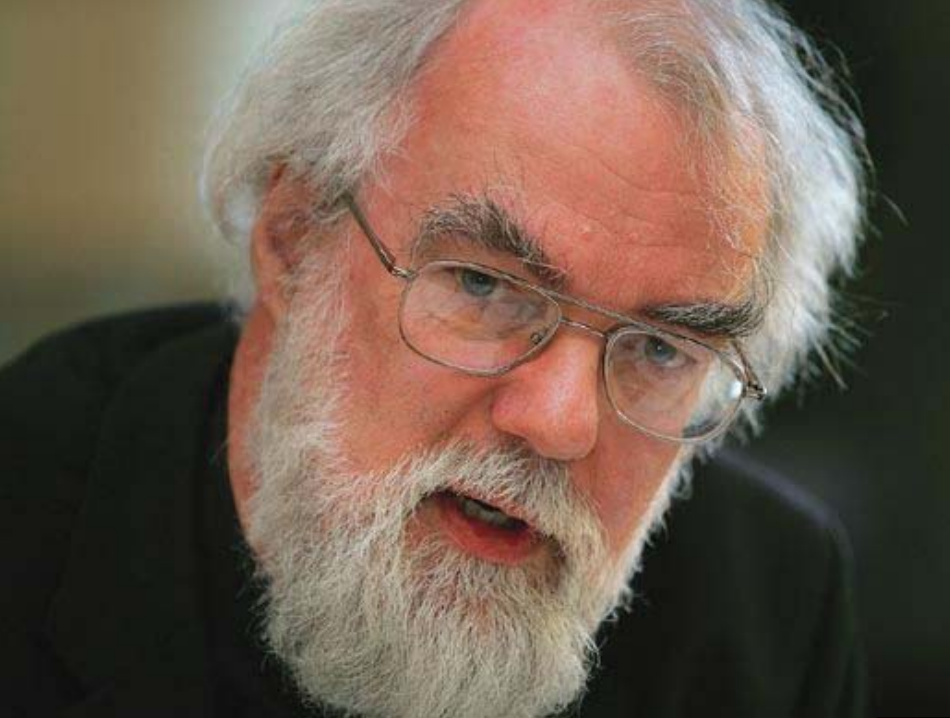




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# Freedom of religion pre-HRA

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- Long history of religious toleration (towards non-Anglican Protestants)
- Catholic non-toleration more enduring, see e.g. Bill of Rights 1688, Act of Settlement 1700, Act of Union 1707, Accession Declaration Act 1910
- Lord Chancellor (Terms of Office and Discharge of Ecclesiastical Functions) Act 1974

# Freedom of religion pre-HRA

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Various legislative measures to accommodate religious diversity, including:

- The Motorcycle Crash Helmets (Religious Exemption) Act 1976
- Section 11 of the Employment Act 1989 (exemption for wearing hard hats on construction sites)
- s139A Criminal Justice Act 1988, as amended by section 4 Offensive Weapons Act 1996
- Part 4 of the Welfare of Animals (Slaughter or Killing) Regulations 1995

# Freedom of religion pre-HRA

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Race Relations Act 1976 prohibits discrimination on basis of 'race, colour, nationality or ethnic or national origins'.

- Jews
- Sikhs
- Muslims

# Article 9(1) ECHR

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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, practice and observance.



# Article 9(2) ECHR

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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.

# Core principles of Article 9

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Like any qualified right, restrictions must be:

- prescribed by law
- for a legitimate purpose
- necessary in a democratic society/'pressing social need'
- proportionate to the aim being pursued

# Core principles of Article 9

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- A 'precious asset for atheists, agnostics, sceptics and the unconcerned' (*Kokkinakis v Greece* (1993) 17 EHRR, para 31)
- 'Pluralism indissociable from a democratic society' (*Kokkinakis*, *ibid*)
- State's 'duty of neutrality and impartiality' (*Metropolitan Church Of Bessarabia v Moldova* (2002) 35 EHRR 306)
- But 'Article 9 does not protect every act motivated or inspired by a religion or belief' (*Sahin v Turkey* (2005) 41 EHRR 8)

# Section 13(1) of the Human Rights Act

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If a court's determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right

# HRA cases on Art 9

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- *R (Dianne Pretty) v DPP and SSHD* [2001] UKHL 61: applicant's 'sincere belief in the virtue of assisted suicide' did not give rise to an Art 9 claim and, even if it did, it would fail under Art 9(2).
- *R v Taylor* [2001] EWCA Crim 2263: possession of cannabis for religious purposes not a defence to a charge of possession with intent to supply under Misuse of Drugs Act 1971.



# HRA cases on Art 9

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- *Khan v RAF Summary Appeals Court* [2004] EWHC 2230: no right to conscientious objection under Article 9 EHCR as a defence to charge of being absent without leave
- *Secretary of State for Education and Employment v Williamson* [2005] UKHL 15: prohibition of corporal punishment under s548 of the Education Act 1996 not incompatible with rights of Christian parents under Article 9 ECHR

# The Begum Case

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*R (Begum) v Headteacher and Governors of Denbigh High School* [2006] UKHL 15: exclusion of pupil from school for failure to wear uniform not incompatible with pupil's freedom of religion under Article 9 ECHR.

# The Begum Case

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- School had 'a very diverse intake', with 21 different ethnic groups, 10 religious groupings, 79% muslim, 'open to children of all faiths and none'
- 1993 consultation of options for uniform included 'parents, students, staff and the Imams of the three local mosques'. School governors approved 'the wearing of head-scarves of a specified colour and quality'
- Uniform worn by Muslim, Sikh and some Hindu students
- 3 other schools in area permitted wearing Jilbab

# The Begum Case

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- Majority held no interference with Article 9(1) because ‘no evidence to show that there was any real difficulty’ in attending one of the local schools which allowed students to wear the jilbab (Lord Nicholls and Lady Hale dissenting)
- Followed the Grand Chamber in *Sahin v Turkey* that: ‘Article 9 does not protect every act motivated or inspired by a religion or belief. Moreover, in exercising his freedom to manifest his religion, an individual may need to take his specific situation into account’ (para 105).

# The Begum Case

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Lord Bingham at para 32 discussing proportionality under art 9(2):

- the high importance of the rights protected by article 9
- the need in some situations to restrict freedom to manifest religious belief
- the value of religious harmony and tolerance between opposing or competing groups and of pluralism and broadmindedness
- the need for compromise and balance
- the role of the state in deciding what is necessary to protect the rights and freedoms of others
- the variation of practice and tradition among member states
- the permissibility in some contexts of restricting the wearing of religious dress



# Recent cases on Art 9

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*Azmi v Kirkless MBC* (2007) IRLR 484 (dismissal of teaching assistant for wearing veil)

*R (Playfoot) v Millais School* [2007] EWHC 1698 (wearing chastity ring not a 'manifestation of belief' in chastity under Art 9 ECHR)

*R (Suryananda) v Welsh Ministers* [2007] EWCA Civ 893 (no exemption from mandatory BSE slaughter policy)

*McClintock v Department of Constitutional Affairs* (2008) IRLR 29 (magistrate on family panel refused exemption from same-sex cases)

Jewish Free School case, March 2008 (High Court, pending)

# Sharia in Britain?

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- Divorce (Religious Marriages) Act 2002 (recognition for Jewish divorce)
- Schedule 8 of the Finance Act 2005 (exempting Islamic mortgages from double stamp duty)
- ‘Sharia is incompatible with the fundamental principles of democracy’ (*Refah Partisi v Turkey* (2003) 37 EHRR 1, para 123)

# Sharia in Britain?

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Turkey, like any other Contracting Party, may legitimately prevent the application within its jurisdiction of private-law rules of religious inspiration prejudicial to public order and the values of democracy for Convention purposes (such as rules permitting discrimination based on the gender of the parties concerned, as in polygamy and privileges for the male sex in matters of divorce and succession). The freedom to enter into contracts cannot encroach upon the State's role as the neutral and impartial organiser of the exercise of religions, faiths and beliefs.

*Refah Partisi v Turkey*, para 128

# Sharia in Britain?

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There must be no *Alsatia* in England  
where the King's Writ does not run.

*Czarnikow & Co v Roth Schmidt & Co*  
[1922] 2 KB 478 per Scrutton LCJ



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