



# JUSTICE

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## Freedom of Thought, Conscience and Religion

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# Article 9 ECHR

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



# Article 9 ECHR

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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.



# Article 9 ECHR

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*Moscow Branch of the Salvation Army v Russia*  
(2007) 44 EHRR 46 at para 57:

It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.



# Why article 9?

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What does article 9 add to articles 10 and 11?

Article 10: Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

Article 11: Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.



# Why Article 9?

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*Campbell and Cosans v United Kingdom* (1982) 4 EHRR 293 at para 36:

- Corporal punishment in Scotland

In its ordinary meaning the word 'convictions' , taken on its own, is not synonymous with the words 'opinions' and 'ideas' , such as are utilised in Article 10 of the Convention, which guarantees freedom of expression; it is more akin to the term 'beliefs' (in the French text: ' *convictions* ') appearing in Article 9



# (1) Individual Right

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- Religion is an aspect of an individual's identity and belief system
- Freedom to believe in what the religion teaches
- Freedom to manifest that belief in certain acts of worship



# Manifestations of religion

Wearing a turban:

*Mandla v Dowell Lee* [1983] 2 AC 548

- School rules prevented the wearing of a turban
- HL – interpreted race under the RRA 1976 to include Sikhs:

“ethnic ... origins” = a group which is a segment of the population distinguished from others by a **sufficient combination of shared customs, beliefs, traditions and characteristics** derived from a common or presumed common past, even if not drawn from what in biological terms was a common racial stock, in that it was that combination which gave them an **historically determined social identity** in their own eyes and in those outside the group.





# Manifestations of religion

Wearing a veil:

*R (on the application of Begum) v  
Headteacher and Governors of Denbigh  
High School* [2006] UKHL 15

- C wished to wear a jilbab rather than shalwar kameeze and headscarf
- HL : article 9(1) engaged. However:
  - 1) What constituted interference with the manifestation of a religious belief depended on all the circumstances of the case, including the extent to which an individual could reasonably be expected to be at liberty to manifest those beliefs in practice
    - School out of catchment; knew policy; other schools in area



# Manifestations of religion

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- 2) Under 9(2) – school rules had a legitimate purpose of protecting rights and freedoms of others. Policy developed to respect mainstream Muslim beliefs
  - limitation prescribed by law which was proportionate to its purpose and objectively justified
- 3) Right to education article 2, protocol 1 –
  - the right was infringed only if the claimant was denied access to the general educational provision available from the system as a whole



## (2) Communal Right

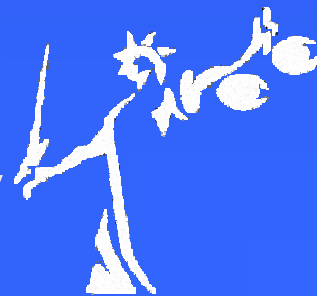
- Association or communal worship
- How far does this extend when it enters the public domain?



*Lautsi v Italy* (2010) 50 EHRR 42, GC judgment pending

Displaying a crucifix interfered with freedom of belief and religion and the right to teaching in conformity with that

- Article 2, Protocol 1 requires the State to educate in an objective, critical and pluralistic way. It must remain neutral. The crucifix has predominantly religious symbology which is intrinsically connected with the Catholic Church. Children lack capacity to formulate their own views and will be influenced by the presence of a religious symbol in the classroom.



# (3) Freedom from Religion

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- The State should not favour one religion over another
- How should it reconcile competing religions?
- How is belief reconciled with other rights?

*Wingrove v UK* (1996) 24 EHRR 1

- Film refused licence by the British Board of Film Classification  
[T]he exercise of that freedom carries with it duties and responsibilities. Amongst them, in the context of religious beliefs, may legitimately be included a duty to avoid as far as possible an expression that is, in regard to objects of veneration, gratuitously offensive to others and profanatory



# (3) Freedom from Religion

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- Should Courts be deciding on the reasonableness of worship?

*Eweida v British Airways plc* [2010] EWCA Civ 80

- C wore a Crucifix over her work uniform
- BA's policy was for religious items to be concealed under uniform unless they could not be concealed and were mandatory as part of the religion
- CA held - Was a personal choice to wear the cross, not a requirement. Could not show disadvantage to practice of her religious faith:



# (3) Freedom from Religion

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*Eweida v British Airways plc* [2010] EWCA Civ 80

Forms of indirect discrimination, relating to age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex and sexual orientation. One cannot help observing that all of these apart from religion or belief are objective characteristics of individuals; **religion and belief alone are matters of choice**.

This case has perhaps illustrated some of the problems which can arise when an individual (or equally a group) asserts that a provision, criterion or practice conflicts with beliefs which they hold but which may not only not be shared but may be opposed by others in the workforce. It is not unthinkable that a blanket ban may sometimes be the only fair solution.



# (3) Freedom from Religion

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- Test = 'consistency with human dignity'



# What constitutes a belief?

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Characteristics?





# What constitutes a belief?

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*R (Williamson and Others) v Secretary of State for Education and Employment* [2005] UKHL 15, para 23:

- Consistent with basic standards of human dignity or integrity
- Must relate to matters more than merely trivial
- Adequate degree of seriousness and importance
- A belief on a fundamental problem
- Not always susceptible to lucid exposition or, still less, rational justification
- Language used is often the language of allegory, symbol and metaphor
- An individual's beliefs are not always fixed and static
- Typically, religion involves belief in the supernatural



# What constitutes a belief?

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Equality Act 2010, section 10

Explanatory notes:

- clear structure and belief system
- a “philosophical belief” that must be genuinely held
- a belief as to a weighty and substantial aspect of human life and behaviour
- attain a certain level of cogency, seriousness, cohesion and importance
- be worthy of respect in a democratic society, compatible with human dignity and not conflict with the fundamental rights of others



# What constitutes a belief?

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- Buddhism
- Christianity
- Hinduism
- Islam
- Judaism
- Rastafarianism
- Sikhism
- Zoroastrianism
- Scientology
- Atheism
- Arsenal
- Man United
- Vegetarianism
- Human Rights
- Take That
- The Beatles



# Respect for Beliefs?

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Mr and Mrs Jones.

Loving couple wishing to foster children aged 5 – 10 years.

Previous experience of fostering.

Observe Pentecostal faith.

During interview explain to social worker they could not inform a child in their care that homosexuality was acceptable behaviour.

Application to foster is refused by the Council.

Has the Council discriminated against them?

Does your view change if they are Muslims?



# Respect for Beliefs

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*R (Eunice Johns and Owen Johns) v Derby City Council and Equality and Human Rights Commission* [2011] EWHC 375 (Admin)

No one is asserting that Christians (or, for that matter, Jews or Muslims) are not 'fit and proper' persons to foster or adopt. No one is contending for a blanket ban. No one is seeking to delegitimise Christianity or any other faith or belief. No one is seeking to force Christians or adherents of other faiths into the closet. No one is asserting that the claimants are bigots. No one is seeking to give Christians, Jews or Muslims or, indeed, peoples of any faith, a second class status. On the contrary, it is fundamental to our law, to our polity and to our way of life, that *everyone* is equal: equal before the law and equal as a human being endowed with reason and entitled to dignity and respect.



# Respect for Beliefs

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We are...entitled, we think, to take judicial notice of the fact that, whereas the *Sharia* is still understood in many places as making homosexuality a capital offence, the Church of England permits its clergy, so long as they remain celibate, to enter into civil partnerships.

...

we live in this country in a democratic and pluralistic society, in a secular state not a theocracy.

