

# Essay

**On the application of Begum v Special Immigration Appeals Tribunal**

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## Introduction

In the case *R (on the application of Begum) v Special Immigration Appeals Tribunal*, how the UK's Supreme Court reflected the case summaries the connection between individual rights and national security risks. This was a case of a teenager, Shamima Begum, leaving the UK and ending up as part of the Islamic State of Iraq (ISIL) group. This prompted her citizenship revocation in 2019, with the UK government citing her a national security risk. Yet, she was detained in Syrian when the case was presided and contested the decision for failing to accord the rights to a fair legal process. This challenged the Supreme Court, where complex legal questions were at play. In addition, there were emerging issues with human rights, citizenship and national security.

## Summary

*R (on the application of Begum) v Special Immigration Appeals Tribunal* was a serious concern for the UK's Supreme Court as it presented a complex legal challenge pitting natural security against individual rights.<sup>1</sup> Shamima Begun was the appellant, a British by birth who, upon traveling to Syria in 2015, aligned with the Islamic State of Iraq and the Levant, alias ISIL. The UK Secretary of State for the Home Department revoked her British citizenship as the agency had identified national security risks.

However, Begun contested the decision, having been held and detailed in a Syrian camp. Central to her argument was that she was being deprived of her citizenship and this refusal to leave and enter the UK to launch an appeal was a violation of her rights and unlawful. Being denied entry into the UK meant that the legal process could have been more effective and fair since she was not given the opportunity to participate meaningfully in the appeal.<sup>2</sup> There were legal implications and questions raised from the case. One of the key issues was the conflict between an individual's rights, especially fair legal process and citizenship issues. This was measured against the need for national security protection and safeguarding. Also, the Supreme Court had to outline the legality and propriety of this government's citizen to revoke the citizenship given that she was not physically present in the UK.

The Supreme Court unanimously supported the Secretary of State by overturning the earlier judgment by the Court of Appeal that previously established that Begum should have been allowed to return to the country to contest this fair citizenship revocation. Yet, the Supreme Court considers this approach erroneous and flawed on various grounds. The Court first challenged the Court of Appeal for failing to

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<sup>1</sup> *R (on the application of Begum) v Special Immigration Appeals Tribunal* (2021) UKSC 7

<sup>2</sup> HJ Hooper, 'Justice for One Side Alone? "R. (on the Application of Begum) v Special Immigration Appeals Commission"' (2022) 2022 Public Law <<https://ora.ox.ac.uk/objects/uuid:6cb5e876-c944-486c-bb15-f32c95efa1de>>.

understand the scope of appealing decisions for refusing leave to enter the country. According to the Supreme Court, such appeals are not substantive when they are brought under the Human Rights Act 1998, which Begum should have cited as the basis for her argument and challenging the decision.<sup>3</sup>

Also, the Supreme Court challenged and noted how the Court of Appeal made a mistake in assessing the requirements of national security.<sup>4</sup> There was an inappropriate decision for the Court to make its security assessments. This led to the overstepping of its judicial roles and did not accord the Secretary of State's judgment due respect as this was a sensitive context and domain.<sup>5</sup> There was also a concern by the Supreme Court over the imbalance in the priority given to the individual's rights to fair hearing over national security. Particularly, although a fair hearing is needed, it may outweigh other considerations, especially those concerned with public safety.<sup>6</sup> When a fair trial cannot be attained without a compromise to public safety, such proceedings are stayed. Finally, the Supreme Court also challenged the lower Court's ruling regarding the extraterritorial human rights policy of the Secretary of State as a strict legal rule and barely a discretion guideline.<sup>7</sup>

### **Approach to Judicial Reasoning by Lord Reed**

*In R v. Special Immigration Appeals Tribunal*, the Supreme Court, under Lord Reed, denoted a judicial reasoning defined by a multidimensional approach to specific legal issues and principles.<sup>8</sup> The judgment confirmed their engagement with the common complexities in balancing security concerns and fundamental individual rights. This was confirmed with Lord Reed's approach and take on Begum's case, outlining the deference to the judgment of the executive on issues with direct implications on national security.

Lord Reed also considered the balance between fairness in legal proceedings and the imperatives for protecting or safeguarding national security.<sup>9</sup> He considered and articulated the view and position that although a fundamental right, fair hearing does not override national security concerns. In cases and contexts where the fair trial may not be conducted without public safety being endangered, Lord Reed

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<sup>3</sup> Mercedes Masters and Salvador Santino F Regilme, 'Human Rights and British Citizenship: The Case of Shamima Begum as Citizen to Homo Sacer' (2020) 12 *Journal of Human Rights Practice* <<https://academic.oup.com/jhrp/article/12/2/341/5910762>>.

<sup>4</sup> Edward Arash Abedian, 'The Begum Question: The Scope of Deprivation of Citizenship Appeals in Cases of Fraud' (2023) 28 *Judicial Review* 164.

<sup>5</sup> Se Wheatle and Elizabeth O'Loughlin, *Diverse Voices in Public Law* (2023).

<sup>6</sup> Ayesha Riaz, 'Increasing the Powers of the Secretary of State for the Home Department to Strip Individuals of Their British Citizenship: *R (on the Application of Begum) v SSHD*' [2023] *Modern Law Review*.

<sup>7</sup> Se Wheatle and Elizabeth O'Loughlin, *Diverse Voices in Public Law* (2023).

<sup>8</sup> *R (on the application of Begum) v Special Immigration Appeals Tribunal* (2021) UKSC 7

<sup>9</sup> Maria Aristodemou, 'The Begum Judgement on the Couch' [2021] *www.criticallegalthinking.com* <<https://eprints.bbk.ac.uk/id/eprint/44663/>> accessed 31 December 2023.

considered the need for a practical solution or approach, "the stay of proceedings."<sup>10</sup> It was specifically crucial and applicable to Begum's case being physically present in the UK as the condition for a fair hearing amounted to a security risk. This reflects the practical balancing of upholding an individual's fundamental rights and the need to protect the larger or broader societal interests.

His judgment also considered the nuances of statutory interpretation. Particularly, he had been focused on interpreting the statutory provisions as linked to the Secretary of State's duties and powers within the human rights context.<sup>11</sup> The Lord challenged that the human rights policy should be considered a guideline for discretion and not a strict legal rule. The viewpoint was necessary to assess the decision's lawfulness within the Secretary of State's decision informed by law on broader discretion.

Finally, the reasoning fronted by Lord Reed confirmed a mark of respect for executive decisions when national security issues and matters arise. The Lord understood the executive's special position in evaluating and responding to national security risks.<sup>12</sup> Defending the executive's judgment influenced the Court's decision to support the Secretary of State. Furthermore, this acknowledges that where national security matters arise, the executive makes the best decisions where there should be a delicate balance between the public's safety and individual's rights.

### **Fundamental Moral Issues and Supreme Court Decision**

The central moral question in the case was the need to balance national security with individual rights. This was extended to the context of revoking citizenship from individuals linked with terrorist organizations. Therefore, key moral theories of justice and utilitarianism come into play, as outlined through the Rawlsian framework.

The case can be analysed through the utilitarian realm because prioritizing public safety and national security by overriding individual rights is morally justified because there is a greater good being served.<sup>13</sup> Hence, for Begum, preventing her return was because the government rendered her a national security threat. The concept or approach is in line with the practical principle that prioritizes the happiness and welfare of the majority over individual liberties.<sup>14</sup> Hence, the Supreme Court supported the government, a

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<sup>10</sup> Maria Aristodemou, 'The Begum Judgement on the Couch' [2021] [www.criticallegalthinking.com](http://www.criticallegalthinking.com) <<https://eprints.bbk.ac.uk/id/eprint/44663/>> accessed 31 December 2023.

<sup>11</sup> Stevie Martin, 'DEFERENCE, "FAIRNESS" and ACCOUNTABILITY in the NATIONAL SECURITY CONTEXT' (2021) 80 The Cambridge Law Journal 209.

<sup>12</sup> Stevie Martin, 'DEFERENCE, "FAIRNESS" and ACCOUNTABILITY in the NATIONAL SECURITY CONTEXT' (2021) 80 The Cambridge Law Journal 209.

<sup>13</sup> Susan Edwards, 'Muslim Racialised Tropes: "Orientalism", Past and Present' [2021] Springer eBooks 21.

<sup>14</sup> Julia Muraszkievicz, 'Applying the Non-Punishment Principle to Returnees from Terrorist Organisations' [2020] Springer eBooks 215.

reflection of utilitarian ethos, showing how, in extreme cases, the same individual rights are subjugated to ensure the security and safety of the collective population.<sup>15</sup>

The same decision, when assessed through the lens of justice theory, specifically John Rawls's principles, focuses on equality and fairness.<sup>16</sup> This theory challenges that each individual, irrespective of their actions and backgrounds, should be accorded equal and fair treatment under the law. This gives them the right to challenge the underlying government decisions that infringe on their fundamental rights. The inability of Begun to participate in the legal appeal because of the overseas detention is a serious issue from the justice position or standpoint.<sup>17</sup> This means that the decision infringed the principle because everyone must have equal access to legal recourse as well as the fair opportunity of contesting decisions directly related to their lives.<sup>18</sup>

When contemplating the decision that should have been made from the Supreme Court's position, there is a need to balance the two moral theories to ensure a justified outcome. Although the Court made a decision aligned with the utilitarian call for prioritizing public safety, this could have required a more balanced approach. Therefore, they could have allowed Begun the opportunity to appeal the decision but equally ensure proper measures for reducing security risks. This would have upheld public safety and equally respected the individual rights to due process based on the justice theories.

The balance was necessary to ensure that the two moral imperatives were satisfied. For one, public safety would not have been compromised while the inherent or underlying principles of equality and fairness in the legal proceedings could have been respected. The decision by the Supreme Court, although justifiable when assessed from the utilitarian perspective, could have considered justice theory elements for realizing a more holistic solution because there were moral issues or problems under consideration.

Accordingly, the Begum case outlines a complex interaction and interplay of moral issues. The Supreme Court was forced to address the challenging issues of national security and how they relate to individual rights. Despite the decision leaning towards utilitarian principles, they also needed to consider justice theory aspects or principles. This could have ensured a more holistic resolution for the involved or underlying moral dilemmas.

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<sup>15</sup> Susan SM Edwards, 'The "Rule of Law" and the "War on Terror"' [2021] *The Political Appropriation of the Muslim Body* 111.

<sup>16</sup> Edor J Edor, 'John Rawls's Concept of Justice as Fairness' (2020) 4 *PINISI Discretion Review* 179.

<sup>17</sup> MYasir Said and Yati Nurhayati, 'A REVIEW on RAWLS THEORY of JUSTICE' (2021) 1 *International Journal of Law, Environment, and Natural Resources* 29.

<sup>18</sup> MYasir Said and Yati Nurhayati, 'A REVIEW on RAWLS THEORY of JUSTICE' (2021) 1 *International Journal of Law, Environment, and Natural Resources* 29.

## Conclusion

The Begun case was presided over by the Supreme Court and outlines a serious legal and moral dilemma that extends beyond the specific and common circumstances. The overall decision to uphold the citizenship revocation, where national security was prioritized over an individual's legal rights, is in tandem with the underlying 'greater good' principle in utilitarian ethics. On the other hand, the ruling raises debates and concerns on how justice and fairness should be balanced when considered through the lens of the Rawlsian theories. This also stressed the case of how legal systems should be balanced with the view and an eye of protecting societal safety and upholding individual rights, more so where or when terrorism and national security are involved. Despite having its decision firmly embedded in legal and national security precedence, the decision stresses the continued tension and why there is a need for carefully balancing utilitarian considerations and overall justice and fairness principles through the legal process.

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## Case

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