

# The Tensions between Human Rights and National Security in the UK: A Case Study of Shamima Begum

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## Abstract

When it comes to human rights and national security, sometimes it is difficult to ascertain which takes precedence. However, in situations where national security takes precedence, it is important to assess the proportionality of derogating from human rights and whether states are justified in doing so. The popular story of Shamima Begum raises crucial issues regarding the proportionality and morality of depriving her British citizenship. The research seeks to discover the tensions between human rights and national security in Shamima's case, with a focus on proportionality and morality. Whilst this paper will show the difficulties in answering such questions, the paper will demonstrate how the decision to deprive Shamima of her British citizenship was, in fact, not proportionate and not moral when considering the facts. In arriving at this conclusion, both national and international laws are explored to investigate the proportionality of the UK's actions; and for morality, the public's opinions take precedence. The research is important as Shamima is only one of the many people who fled the UK and one of many who also want to come back. Furthermore, the judgments laid out in this case set a binding precedent, which will impact other people like Shamima detrimentally later.

## Key Words

Human rights, national security, Shamima Begum, proportionality, morality

## 1. Introduction

The challenge of balancing human rights and national security interests has only become more problematic over time. The controversial case of Shamima Begum highlights many of the delicate issues that may arise while trying to achieve this balance. In Shamima's case, there are conflicting views on what is right and wrong, both legally and morally. While there is much research on the case of Shamima and her rights, most of those reside on the extreme positions of both sides. While some emphasise Shamima's human rights, others emphasise the national security interest in the UK. There seems to be a lack of studies focusing on the morality of the case, with even less regarding the proportionality analysis involved.

### Shamima's Story in Brief

Shamima Begum left the UK in 2015 with two other girls to join the Islamic State group at the age of fifteen. They left their East London homes to travel from Gatwick Airport to Turkey, and then to Syria. Only months before this, a friend of these girls (Sharmeena Begum), also travelled to Syria to join ISIL after she had 'immersed herself in a particular version of Islam

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following her mother's death'.<sup>1</sup> What started as just national news soon turned into international news.

After four years, Shamima caught the media's attention again after an interview with *The Times* reporter, Anthony Lord, on February 13<sup>th</sup> 2019. In the interview, Shamima states that she wants to return to the UK to give her unborn child a better life, as well as a better chance of survival. She also talks about marrying a twenty-seven-year-old Dutch national IS fighter ten days after arriving, with whom she has three children (who all pass away).<sup>2</sup>

Less than a week later, the then Home Secretary, Sajid Javid, sent Shamima's family a letter informing them that they intended to officially revoke Shamima's British citizenship. This revocation is the first of its kind: Shamima is the first British woman to have been deprived of her citizenship, and the reason behind this revocation was that it was assessed that Shamima posed a threat to the UK's national security. This decision made headline news, causing the British public to have mixed views and opinions on the case. Some feel very sympathetic towards Shamima, especially due to her age and what she has gone through, whilst others argue that it is her fault and that she does not deserve to come back to the UK, particularly as she joined a group who have detrimentally affected many innocent people around the world. Since 2019, there have been different legal trials appealing the decision of the Home Secretary, which have ultimately resulted in Shamima being left in the North-East Syrian refugee camp with no prospect of ever returning to the UK. Her latest appeal was only in February this year. Notably, Shamima was forbidden entry into the UK during all of the trials.

Challenging questions such as 'Can we trust her enough to allow her back and not commit or assist in the planning of attacks, or even radicalise others when in Britain?' have understandably been asked. Others are asking why she is not being punished according to the UK's Criminal Justice System, within the UK itself, especially because Shamima was born in Britain and left to join ISIL as a British citizen. Other questions relate to how Shamima's human rights were not considered enough in court judgements, or why and how the approach taken by Sajid Javid and the courts was very much in favour of national security but ignorant of individual rights. There has been a growing controversy around this topic since 2019. The fundamental topic of Shamima's case is about how the State and the courts balance human rights and national security in the UK. Which, as below will illustrate, is a testing task.

### Research Questions

Two specific questions will be considered. First, was the deprivation decision proportionate? This question is significant and can highlight the legal problems within the case. Secondly, was the deprivation decision morally right or wrong? This question offers a different perspective, one on a deeper level. Asking these questions will provide an understanding of what the tensions are between human rights and national security, highlighting the difficulties of making these two essential things coexist in cases like Shamima's.

### Initial Hypothesis

The tensions between human rights and national security are worldwide, not just in the UK. While the governments of different countries are trying to protect the national security of their country, they are also trying to uphold human rights and ensure that people are safe. (Although this does not apply to many countries.) From preliminary research, the above statement holds true. Additionally, when referring to Shamima Begum, these tensions are evident. Depriving

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<sup>1</sup> EVAW 'Home Secretary should reverse decision on Shamima Begum's citizenship' (*End Violence Against Women*, 3 April 2019) <<https://www.endviolenceagainstwomen.org.uk/evaw-ask-home-secretary-to-reverse-decision-on-shamima-begums-citizenship/>> accessed 24 October 2024.

<sup>2</sup> 'Shamima Begum: Ex-Bethnal Green schoolgirl who joined IS 'wants to come home'' (*BBC*, 14 February 2019) <<https://www.bbc.com/news/uk-47229181>> accessed 24 October 2024.

Shamima of her British citizenship was done to protect the national security of the UK, but in doing so, they also largely limit her human rights. Thereby, there is a conflict between national security and human rights. Ultimately, it seems that the decision was not proportionate, although the courts involved in Shamima's legal battles held otherwise. Deciding on the morality of the decision is also complex; nonetheless, likely to be immoral, mainly due to Shamima's age, vulnerability and her son. These hypothesis's will be discussed in the following chapters.

### Research Methodology

The research used secondary materials, including news articles and Non-Governmental Organisations' websites. Primary materials include UK and international cases; legislation will also be largely referred to in Chapter 2.

### Significance and Contribution of the Study

Shamima's case highlights the importance of maintaining a steady balance between human rights and national security, or at least with this as the primary aim. Whilst ensuring that the safety of the British public must be prioritised, pushing human rights aside may leave more challenging issues, resulting in the human rights significance, diminishing. In an already complex world, hopefully, research on topics like this can provide ways to improve it for individuals who have unfortunately found themselves in similar shoes to Shamima.

### Structure of the Article

This article argues that the Home Secretary's decision to deprive Shamima of her British Citizenship was neither proportionate nor morally right. The article is split into two main Parts. The next Chapter, Chapter 2, deals with the proportionality of the deprivation decision vis-à-vis the alleged threat the national security that she potentially poses. Chapter 3 deals with the moral decisions attached to the citizenship deprivation decision. Finally, Chapter 4 summarises the article and arrives at its conclusion.

## 2. Was the deprivation decision proportionate?

This chapter will explore the first research question, considering the proportionality of the deprivation decision.

When considering proportionate responses, we tend to resort to questioning whether the response was fair. For example, punishments must reflect the offences committed.<sup>3</sup> It would be disproportionate to sentence a serial killer to 5 years, as more severe consequences are deserved for the lives affected. Proportionality requires a fair balance to be struck between the individual's rights and the interests and rights of the public, thereby putting an obligation on those who act to assess the context and all of the relevant factors of the situation before taking legal action.

When two or more rights conflict, the Court of Justice of the European Union held in *Azienda Agro-Zootecnica Franchini Sarl v Regione Puglia* that:

Measures adopted by Member States in this field do not exceed the limits of what is appropriate and necessary to attain the objectives legitimately pursued by the legislation in question; where there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued ....<sup>4</sup>

<sup>3</sup> Vicki C Jackson, 'Constitutional Law in an Age of Proportionality' [2015] *The Yale Law Journal* 3094.

<sup>4</sup> Case C-2/10 *Azienda Agro-Zootecnica Franchini Sarl v Regione Puglia* [2011] ECR I-6561, para 73

From this, assessing proportionality includes four questions:

- 1- Is the objective sufficiently important enough to restrict fundamental rights?
- 2- Are the measures adopted rationally connected to the objective?
- 3- Were the least restrictive option chosen?
- 4- Were the disadvantages proportionate to the aims pursued?

Asking these questions should determine whether there was a fair balance. Before engaging with each of these four questions, it is worthwhile to briefly narrate the procedural History of Shamima's cases in various UK courts.

### The Procedural History of the Shamima Begum Cases

Under the Human Rights Act 1998, this principle aims to protect people. Generally, absolute rights cannot be interfered with, but, in certain circumstances, the state can restrict or limit these rights. However, the proportionality test must be applied.

On the 19th of February 2019, the then Home Secretary, Sajid Javid, stated in the letter:

As the Secretary of State, I hereby give notice following section 40(5) of the British Nationality Act 1981 that I intend to have an order made to deprive you, Shamima Begum of your British citizenship under section 40(2) of the Act. This is because it would be conducive to the public good to do so. The reason for the decision is that you are a British/Bangladeshi dual national who it is assessed has previously travelled to Syria and aligned with ISIL. It is assessed that your return to the UK would present a risk to the national security of the United Kingdom. In accordance with section 40(4) of the British Nationality Act 1981, I am satisfied that such an order will not make you stateless.<sup>5</sup>

There have been several rounds of litigation following the decision of the Home Secretary.

### [Begum v the Secretary of State for the Home Department \(SSHD\) 2020.6](#)

In the appeal, the Special Immigration Appeals Commission (SIAC) took the approach that they are not deciding the merits of a decision, but simply 'applying the principles of judicial review'.<sup>7</sup> The court deferred to the discretion of the Home Secretary on national security concerns.

### [Begum v SIAC 2020.8](#)

However, in the appeal of SIAC's decision, the Court of Appeal (CoA) found that 'SIAC took the wrong approach ... appeals under s.2 and 2B of the 1897 Act are full merits appeals' and that SIAC should have decided 'for itself' whether the deprivation decision was justified. Further, SIAC should not have just questioned the rationality and reasonability of the decision, as in judicial reviews.<sup>9</sup>

### [Begum v SSHD 2021.10](#)

The matter reached the Supreme Court (SC), where it was ruled that the CoA erred in its approach by not giving the Home Secretary's assessment the deserved respect 'for reasons

<sup>5</sup> Letter to Shamima Begum from the Home Secretary.

<sup>6</sup> [2020] UKSIAC 163.

<sup>7</sup> *ibid* [138].

<sup>8</sup> [2020] EWCA Civ 918.

<sup>9</sup> *ibid* [123].

<sup>10</sup> [2021] UKSC 7.

both of institutional capacity ... and democratic accountability'.<sup>11</sup> The SC held that Shamima was unable to return to the UK to appeal the deprivation decision.

#### [Begum v SSHD 2023.12](#)

Although she could not be present, Shamima appealed the deprivation decision to SIAC. SIAC acknowledged that national security 'does not trump everything else. It must be weighed against fundamental rights and entitlements'. Although SIAC accepted that there was 'credible suspicion' that Shamima was trafficked, following the SC ruling, they respected the Home Secretary's national security assessment, meaning that proportionality was only to be done by him in this case. Whilst SIAC found that Shamima being left *de facto* stateless was a relevant consideration in the proportionality equation, they held that the Home Secretary was aware and therefore considered it. Due to the SC ruling, SIAC's only job was to assess whether the Home Secretary had considered it. SIAC also held that even though Shamima was not given the opportunity to make representations, the outcome would have been the same.<sup>13</sup> Overall, Shamima was unsuccessful in this appeal, too.

#### [Begum v SSHD 2024.14](#)

The CoA, on appeal from SIAC, upheld SIAC's decision favouring the Home Secretary. The CoA held that the deprivation decision was not unlawful, stating that: 'It could be argued that the decision in Ms Begum's case was harsh; it could also be argued that Ms Begum is the author of her own misfortune' and their only task was to decide if the decision was unlawful.<sup>15</sup>

#### [Supreme Court Appeal 2024.16](#)

The matter travelled back to the SC, where Shamima's deprivation decision appeal was refused because 'the grounds of appeal' did 'not raise an arguable point of law'.<sup>17</sup> The SC refused to hear her appeal essentially because it accepted the previous judgements, especially that the Home Secretary was entitled to set aside concerns regarding Shamima being a potential trafficking victim.

It should be noted that Shamima's lawyers have said that following the SC's ruling, they are going to try and take the case to the European Court of Human Rights (ECHR). More information is available to present date, but it is not essential for this article. At this stage, we may proceed to consider each of the four questions of proportionality devised at the beginning of this chapter and see how those could be answered in the light of the facts and circumstances surrounding Shamima Begum.

### **The Proportionality Test Applied.**

#### [Is the objective sufficiently important enough to justify restricting fundamental rights?](#)

UK national security generally refers to the protection of its population, infrastructure, institutions and government system. It can cover many different things, but for this article, the above will be referred to. The Security Service assessed the threat that Shamima was alleged to pose to national security. This assessment must be considered due to the importance of

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<sup>11</sup> *ibid* [70].

<sup>12</sup> [2023] UKSIAC 163.

<sup>13</sup> *ibid* [5], [164], [211], [303], [349].

<sup>14</sup> [2024] EWCA Civ 152.

<sup>15</sup> *ibid* [138].

<sup>16</sup> [2024] UKSC 0096.

<sup>17</sup> *ibid*.

national security. The national security assessment by the Security Services were noted in detail in the Supreme Court 2021.<sup>18</sup>

In paragraph 16, SS noted that Shamima ‘possessed both UK and Bangladeshi citizenship’, which will be discussed below. They claimed that anyone who had travelled to Syria to align with ISIL posed a threat to the UK’s NS. They did consider that anyone radicalised as minors were possibly considered victims, but this did not stop her from posing a threat to NS.

Paragraph 17 comments on an SS statement from 2017. SS had assessed that anyone who voluntarily travelled to ISIL-controlled territory, since the 2014 caliphate was declared, knew of the aims, ideology and attacks by ISIL. Therefore, it was said that a ‘deliberate decision’ was made for them to support terrorist activity. SS acknowledged how, for most women who went, they were the wives of fighters and raised the next generation of supporters; the women, although not always fighting, were still actively supporting a terrorist organisation which is responsible for atrocities which have affected many lives.

Paragraphs 18 and 19 discuss the potential risks of allowing individuals back. It was first noted that the UK ‘was a priority target for ISIL terrorists’; secondly, ISIL ‘encouraged women to carry out attacks’ and that anyone who spent a prolonged period there was ‘likely capable’ of doing so. Thirdly, there was a risk that those who returned might ‘inspire, encourage or provide support to those who had not travelled there to carry out attacks’. Fourthly, there was a possibility that those who returned would assist in the planning of attacks, especially because they were ‘likely to have developed contacts in ISIL, who might direct them to undertake support activities’.

Paragraph 20 included a 2018 statement from SS, which had assessed that ‘the national security threat from the UK-linked ISIL-aligned individuals would increase significantly if they returned to the UK’.

Further, the Home Secretary was also reminded of the Secretary of State’s policy:

[T]he Secretary of State has a practice of not depriving individuals of British citizenship when they are not within the UK’s jurisdiction for ECHR purposes if she is satisfied that doing so would expose those individuals to a real risk of treatment which would constitute a breach of article 2 or 3 if they were within the UK’s jurisdiction and those articles were engaged.

Regarding the policy, paragraph 22 stated that the Home Secretary was advised that ‘there are no substantial grounds to believe that a real risk of mistreatment contrary to articles 2 (right to life) or 3 (prohibition of torture) will arise as a result of Begum being deprived of her British citizenship while in Syria’. It also claimed that it was not ‘foreseeable as a consequence of the deprivation decision’ that outside of Syria, Shamima would be exposed to these risks.

In addition, a Mistreatment Risk Statement from February 18<sup>th</sup> 2019, relating specifically to Shamima was given, as well as a cross-Government Mistreatment Risk Statement. It was assessed that Shamima would ‘broadly’ face the same treatment with or without her citizenship. Importantly, the SS concluded that entering Bangladesh was not a foreseeable outcome, meaning that there was likely no risk of mistreatment if she went there.

[Are these possible threats assessed by SS enough to justify depriving Shamima of her citizenship?](#)

For this question, national security and the potential threats to it can arguably be considered as a justifiable reason to restrict someone of their rights. As the SS highlighted, although

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<sup>18</sup> [2021] UKSC 7, [16] – [24].

Shamima was likely a victim, it did not prevent her from also being capable of carrying out attacks.

However, whilst national security is undeniably important for everyone in the UK; can it really be considered that Shamima actually posed such threats? This will be discussed below. In addition, was the deprivation decision the only way to protect NS, this will also be discussed below.

#### Are the measures adopted rationally connected to the objective?

Depriving Shamima of her citizenship can be argued to have been rationally connected to the objective of protecting NS. Preventing someone from returning to a country certainly helps in stopping them from planning potential ISIL attacks, getting involved in the attacks, radicalising and recruiting others in the UK, and providing support to ISIL operatives. Therefore, it is easily argued that depriving someone of their citizenship is an effective way of protecting NS.

However, Shamima claimed that she was just a housewife and mother and never took part in any terrorist activity.<sup>19</sup> If Shamima were a housewife and were not involved in any terrorist activity, then the likelihood of her taking part in the attacks in any way is very slim.

Additionally, whether Shamima ‘voluntarily’ travelled to Syria should be addressed; whether this should be given considerable consideration is controversial. SIAC, in 2023, noted how the national security assessment by the SS decided that Shamima was ‘self-motivated’.<sup>20</sup> Although Shamima chose to leave, her age and vulnerability must be considered. Shamima was 15, and her friend, Sharmeena, who had already joined ISIL, was encouraging her through social media to go too. Many teenagers at this age make questionable decisions and are very much influenced by their peers. Hence why this question has been asked so much within schools and at family homes: If your friend jumped off a bridge, would you? Highlighting the often irrational and naïve decisions teenagers make. Sharmeena encouraging Shamima was likely a very big factor pushing her to leave. Dr. Korzinski argued that Shamima was likely ‘yearning for love and attention’ and was susceptible to ‘peer pressure’.<sup>21</sup>

Moreover, the Home Secretary considered her high grades in the assessment, a witness claiming that ‘it was inconceivable that’ she would not have known what ISIL were doing as a terrorist organisation’.<sup>22</sup> However, individuals can be academically intelligent, but they can also be gullible and lack common sense. This non-existent correlation was noted by SIAC.<sup>23</sup> Additionally, a Joint report claimed that people ‘travelled to join the caliphate who had no interest or real ... awareness of – the uncompromising brutality of ISIS’, but SIAC held that this was for the Home Secretary to decide.<sup>24</sup>

It can also be argued that whilst the general national security assessment might deem those who return as a threat to NS, but when properly considering that she was groomed and trafficked for sexual exploitation, this changes. For someone who was neither, it is reasonable to assess them as being dangerous and likely to support ISIL from the UK, as they truly did voluntarily go. However, Shamima was groomed and trafficked; therefore, these external factors need to be given weight. Just like in criminal cases, the circumstances must be considered to ensure a fair balance. Because Shamima was a victim, the chances of her

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<sup>19</sup> ‘IS bride Shamima Begum full transcript: It was nice at first, like in the videos’ (*Sky News*, 20 February 2019) <<https://news.sky.com/story/is-bride-shamima-begum-full-transcript-i-did-have-a-good-time-there-11640278>> accessed 6 January 2025.

<sup>20</sup> [2023] UKSIAC 163 [285].

<sup>21</sup> *ibid* [166].

<sup>22</sup> *ibid* [163].

<sup>23</sup> *ibid* [173].

<sup>24</sup> *ibid* [168].

encouraging others to travel there are very slim. The chances of her actively attacking in the UK are even slimmer.

Furthermore, the fact that Shamima wanted to come back and has gone through these complicated legal proceedings shows her determination to get away from there. In support of this, Shamima's children's deaths will have likely significantly affected her and made her regret leaving the UK even more.

Another factor that needs to be considered is whether the UK failed Shamima before she left. In December 2014, Shamima was interviewed by police at her school, where they failed to identify her as being at risk of leaving for Syria. In early February 2015, the police visited Shamima in school again, where they handed her a letter intended for her parents. This letter never made it to her parents.<sup>25</sup> If it had, then Shamima's parents would have been aware that Sharmeena had left to join ISIL, which in turn could have helped them to stop Shamima from leaving too.

Overall, it proves difficult to answer this question when you consider all relevant factors. On one hand, it is a way to protect NS. On the other hand, it seems to be an extreme method.

The following question will better determine whether this was irrational due to the extremity.

#### Was the least restrictive option adopted?

To answer this, it is crucial to consider the alternatives that were available (and possibly still are). For this article, two different measures will be discussed: the one that was adopted and the alternative.

#### Impact of the Deprivation Decision.

Depriving someone of their citizenship can leave a person with very limited options for their short and long-term future, and breach many basic and fundamental rights.

**Section 6 of the Human Rights Act (HRA) (1998).**- It is important to note that S.6(1) puts a legal obligation on public bodies to act compatibly with Convention rights.<sup>26</sup> S.6(2) allows (1) if (a) 'the authority could not have acted differently'.<sup>27</sup> So in Shamima's case, only if the Home Secretary could not have acted differently, are violations of Conventional rights lawful.

**Article 2 of the HRA.**- Article 2 ensures that 'everyone's right to life shall be protected by law'.<sup>28</sup> It also obliges States to sometimes take reasonable steps to protect individuals when their lives are at risk. However, if it is 'necessary' to prevent 'unlawful violence' it is acceptable.<sup>29</sup> Whether this was violated is difficult to answer with the evidence at hand.

**Article 3 of the HRA.**- The decision left Shamima in a camp with very poor conditions (discussed further below), said to be breaching Article 3. Article 3 protects people from torture (mental or physical) and inhuman or degrading treatment.<sup>30</sup> If the authorities are aware of this violation, they are obliged to prevent it. Under this article, inhuman or degrading treatment includes 'severe detention conditions or restraints' and 'serious physical and psychological abuse'.<sup>31</sup> For a breach, the sex, age, vulnerability, health and psychological and physical effects

<sup>25</sup> *ibid* [84].

<sup>26</sup> Human Rights Act 1998 (HRA 1998), s 6(1).

<sup>27</sup> HRA 1998, s 6(2)(a).

<sup>28</sup> HRA 1998, Article 2, s 1.

<sup>29</sup> HRA 1998, Article 2, s 2(a).

<sup>30</sup> HRA 1998, Article 3.

<sup>31</sup> 'Article 3: Freedom from Torture and Inhuman or Degrading Treatment' (*Equality and Human Rights Commission*, 4 May 2016) <<https://www.equalityhumanrights.com/human-rights/human-rights-act/article-3-freedom-torture-and-inhuman-or-degrading-treatment>> accessed 6 January 2025.

need to be considered.<sup>32</sup> The European Court of Human Rights held that exposing someone to these forbidden harms in this article is never allowed.<sup>33</sup> In another case where women were illegally trafficked into England and forced to work in conditions of servitude, police were held to have failed their duty under Article 3<sup>34</sup>. It can be reasonably said that Article 3 was breached by the deprivation decision.

**Article 4 of the HRA.-** Slavery, servitude and forced labour are prohibited.<sup>35</sup> It can also include sexual exploitation, which it has been argued that Shamima unfortunately experienced due to being trafficked to Syria. Additionally, Shamima was only 15 when she married an IS fighter and gave birth, which is statutory rape in England under the Sexual Offences Act 2003.<sup>36</sup> Article 4 has, evidently, been breached.

**Article 5 of the European Charter of Fundamental Rights.-** S.3 specifically states: 'Trafficking in human beings is prohibited'.<sup>37</sup> There is evidence which shows Mohammed Al-Rashed assisting Shamima and the two other girls into the car to help them get to ISIL-controlled territory.<sup>38</sup> Further, there is evidence that Shamima was groomed and radicalised, and once she got to Syria, 'there was no realistic prospect of her getting away'.<sup>39</sup> Therefore, there seems to be evidence that the 15-year-old was trafficked for sexual exploitation, which breaches this article.

**Article 26 of the Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT) 2005.-** Article 26 contains the 'non-punishment' principle, which should have been applied. The Home Secretary argued that it was not applicable as it was not a criminal case; SIAC held that s.40 BNA 'is not a punitive power'.<sup>40</sup> Further stating that s.40 power is 'to protect the public, not punish persons who may also be victims'.<sup>41</sup>

**Modern Slavery Act 2015.-** S.45 of this act states the 'defence for slavery or trafficking victims who commit an offence'.<sup>42</sup> S.45(4) forbids punishment for individuals who committed offences 18 and under if committed as a 'direct consequence of the person being, or having been, a victim of ... relevant-exploitation' and a 'reasonable person in the same situation as the person and having the person's relevant characteristics would do that act'.<sup>43</sup>

**Article 6 of the HRA.-** Everyone has a right to a fair trial. Shamima was not given the chance to have a fair trial as she was unable to be present and because she could not prepare a representation for the trial.

**Article 3 of the UN Convention on the Rights of the Child.-** This article means that 'the best interests of the child' are in 'all actions concerning children'.<sup>44</sup> Shamima gave birth to her child before being deprived, thereby he was a British citizen, and the Home Secretary should not have left him in such conditions as it was not in his best interest. Her son's death supports this.

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<sup>32</sup> *ibid*.

<sup>33</sup> *Chahal v United Kingdom* (1996) 23 EHRR 413

<sup>34</sup> *OOO (and others) v Commissioner of Police for the Metropolis* (2011) EWHC 1246 (QBD)

<sup>35</sup> HRA 1998, Article 4, s 1, s 2.

<sup>36</sup> Sexual Offences Act 2003, s 9.

<sup>37</sup> European Charter of Fundamental Rights, Article 5, s 3.

<sup>38</sup> [2023] UKSIAC 163 [88].

<sup>39</sup> *ibid* [281].

<sup>40</sup> *ibid* [241].

<sup>41</sup> *ibid* [226].

<sup>42</sup> Modern Slavery Act 2015, s 45.

<sup>43</sup> *ibid* s 45(4).

<sup>44</sup> UNCRC 1992, Article 3, s 1.

As illustrated, the deprivation decision led to many violations of rights.

What Alternatives might there have been?

The alternative option was to bring Shamima and her son back to the UK to face a full investigation into her terrorism activity claims. This may have resulted in her facing sentencing, but in this process, both her son and herself would have been better off. Shamima would have had the possibility of rehabilitation, which can be said to be in the public interest. In SIAC,<sup>45</sup> Shamima relied upon Lord Kerr's dissenting judgement in *Ali v SSHD*,<sup>46</sup> where he said that 'there is a public interest in families being kept together, in the welfare of children being given primacy, and in encouraging and respecting the rehabilitation of offenders' and that these factors 'should be part of the proportionality equation'.<sup>47</sup> Dr. Green also argued that Shamima could have been successfully rehabilitated if she had returned before the decision.<sup>48</sup>

The least restrictive measure was not adopted by the Home Secretary. Shamima should have been given the chance to prove her innocence.

Were the disadvantages proportionate to the aims pursued?

When aligning this question with Shamima, we are asking: Is leaving her, essentially stateless, in warzone territory an appropriate response to protect NS?

To answer this, it is important to thoroughly consider the consequential disadvantages for Shamima due to the deprivation decision, which includes being left in al-Hawl (refugee camp) and being left stateless.

Shamima's disadvantages.

There is no doubt that Shamima Begum and her newborn were left in dangerous territories. This, in itself, is very morally challenging and unethical (which will be discussed in more detail in the following chapter). Shamima was only 19 when she was deprived of her British Citizenship; grown adults would not want to be left in such areas.

The conditions of the camp have continually deteriorated since 2019. Al-Hawl, where Shamima was when deprived, is controlled by the Syrian Democratic Forces (SDF); at the start of 2019, it was said to be home to 10,000 people, which quickly turned into approximately 74,000 the same year. Further, it was estimated that for 240 people, there was only 1 guard.<sup>49</sup>

At the time, 85% of the camp had connections with the Islamic State (IS), and as a result, the camp had its own religious police, which enforced the ideology of IS.<sup>50</sup> Shockingly, due to refusing to wear a niqab outside the tent, a grandmother killed her granddaughter.<sup>51</sup> Also, it is important to consider that Shamima was facing death threats in al-Hawl by other ISIS wives since having interviews with journalists, signifying the poor security there.<sup>52</sup>

<sup>45</sup> [2023] UKSIAC 163 [31].

<sup>46</sup> *Ali v SSHD* [2016] UKSC 60; [2016] 1 WLR 4799.

<sup>47</sup> *ibid* [169].

<sup>48</sup> [2023] UKSIAC 163 [169].

<sup>49</sup> Zack McGuinness, 'Inside Syria's al-Hawl Refugee Camp' (*Pivot Mias*, 30 July 2020)

<<https://pivot.mias.org.au/2020/07/30/inside-syrias-al-hawl-refugee-camp/#:~:text=The%20camp%20is%20overcrowded%2C%20malnutrition%20is%20rampant%2C%20water,371%20children%20died%20at%20Al-Hawl%20in%202019%20alone>> accessed 14 November.

<sup>50</sup> *ibid*.

<sup>51</sup> Tim Dowling, 'Inside al-Hawl camp, the incubator for Islamic State's resurgence' (*The Guardian*, 31 August 2019) <<https://www.theguardian.com/world/2019/aug/31/inside-al-hawl-camp-the-incubator-for-islamic-states-resurgence>> accessed 21 November 2024.

<sup>52</sup> Anthony Blair, 'ISI bride Shamima Begum 'on the run' after DEATH THREATS from other jihad wives' (*Daily Star*, 2 March 2019) <<https://www.dailystar.co.uk/news/latest-news/shamima-begum-isis-bride-escape-18866082>> accessed 12 December 2024.

Additionally, a report found that in al-Hawl and al-Roj (Shamima's current camp), over 500 people died, and 371 were children.<sup>53</sup> These facts highlight the poor conditions in these, evidently, overcrowded camps. It is also important to note that Shamima's son, Jarrah, died due to these poor conditions, not long after she was deprived, which is another consequence of being deprived, as there is a chance that he could have survived, provided he had UK healthcare. (Her son's safety and well-being were the most important to her when seeking to return to the UK). Whilst there have always been vast amounts of diseases and illnesses around these camps, the healthcare is minimal.

As illustrated, one major disadvantage for Shamima was that she was left in these concerning conditions, said to be as bad as torture.

#### Potential Statelessness.

To be stateless is to not be a 'national by any State under the operation of its law'.<sup>54</sup> Having no nationality can take away an individual's sense of identity and severely limit their most basic rights. For example, access to education and health care is unavailable for those without nationality. Being left stateless can significantly damage one's mental health, possibly making them feel very depressed and hopeless.<sup>55</sup> When there are gaps in nationality laws, the risk of becoming stateless increases.

*In the UK*, s.40(2) British Nationality Act (BNA) (1981) allows the Government to revoke citizenship if 'satisfied that deprivation is conducive to the public good'.<sup>56</sup> However, s.40(4) forbids deprivation 'if he is satisfied that the order would make a person stateless'. From this, it seems evident that the decision was illegally made. The Home Secretary's decision to deprive was because she had British/Bangladeshi dual citizenship, and he was satisfied that it would not leave her stateless. Shamima, at the time, having British/Bangladeshi dual nationality is questionable and was given great amounts of weight in the decision along with NS.

*In Bangladesh*, s.5 of the Bangladeshi Citizenship Act (1951) states that a person born after 1951 'shall be a citizen of Bangladesh by descent if his [father or mother] is a citizen of Bangladesh at the time of his birth'.<sup>57</sup> However, s.14(1) prohibits dual-nationality for s.5, but this does not apply to Shamima due to s.14(1A) allowing dual-nationality if you are under 21.<sup>58</sup> Thereby, legally, Shamima was eligible for Bangladeshi Citizenship as her father is of Bangladeshi origin, and she was 19 at the time of the deprivation decision. However, being eligible did not mean that she had citizenship. Moreover, many people can apply for citizenship and be rejected. The Bangladeshi Foreign Minister stated 'Bangladesh asserts that Shamima Begum is not a Bangladeshi citizen. She is a British citizen by birth and has never applied for dual nationality with Bangladesh'.<sup>59</sup> Abdul Momen, former Foreign Minister, also told ITV News that Bangladesh has 'nothing to do with Shamima' and that she would face 'capital punishment' if 'found to be involved with terrorism'.<sup>60</sup>

<sup>53</sup> 'Urgent need' to repatriate, rehabilitate ISIL children in Syria' (*Al Jazeera*, 18 June 2020) <<https://www.aljazeera.com/news/2020/6/18/urgent-need-to-repatriate-rehabilitate-isil-children-in-syria>> accessed 28 December 2024.

<sup>54</sup> UNHCR '1954 Convention relating to the Status of Stateless Persons', Article 1.

<sup>55</sup> UNHCR Staff, 'Five things to know about statelessness' (*UNHCR*, 15 August 2024) <<https://www.unhcr.org/news/stories/five-things-know-about-statelessness>> accessed 29 December 2024.

<sup>56</sup> British Nationality Act 1981, s 40(2).

<sup>57</sup> Citizenship Act 1951, s 5 (Bangladesh).

<sup>58</sup> *ibid* s 14(1), 14(1A).

<sup>59</sup> Ministry of Foreign Affairs (Bangladesh), 'Press Release' (*MOFA GOV BD*, 24 February 2019) <[https://mofa.gov.bd/site/press\\_release/a5530623-ad80-4996-b0b4-f60f39927005](https://mofa.gov.bd/site/press_release/a5530623-ad80-4996-b0b4-f60f39927005)> accessed 4 January 2025.

<sup>60</sup> Bangladesh's Foreign Minister tells ITV News Islamic State Bride Shamima Begum is 'not our problem' (ITV News, 2 May 2019) <<https://www.itv.com/news/2019-05-02/bangladeshs-foreign-minister-tells-itv-news-islamic-state-bride-shamima-begum-is-not-their-problem>> accessed 12 December 2024.

Although Bangladeshi law allows Shamima to apply for citizenship, she likely would have been rejected due to Bangladeshi courts favouring their government. Therefore, s.40(4) BNA has been breached overall, because just the eligibility of applying for it does not mean that you have, thereby leaving Shamima Stateless. However, it can be said that Shamima was a Bangladeshi citizen, but only in a technical sense.

*At the international level*, Article 8(3)(ii) of the 1961 Convention on the Reduction of Statelessness deals with the cumulative impact of conflicting national laws. It allows the States to deprive someone of their citizenship if the individual was ‘seriously prejudicial to the vital interests of the State’,<sup>61</sup> which is arguably what Sajid did. But Article 8(4) states that deprivation must follow the law, giving them the right to a fair hearing.<sup>62</sup> Shamima was refused leave to enter to appeal the deprivation decision and therefore was not given a fair trial. However, Article 15 of the Universal Declaration of Human Rights (1948) gives everyone a right to nationality and protection from its arbitrary deprivation.<sup>63</sup> Shamima was left Stateless, which went against both UK and international law. As discussed, being left stateless has detrimental impacts on a person. SIAC found that Shamima was not *de jure* stateless but was unable to travel to Bangladesh due to the risk of torture.<sup>64</sup>

Overall, the disadvantages were disproportionate to the aims pursued. Compared to the threat Shamima posed to NS, it seems like she was severely impacted by the decision.

### Was the deprivation decision proportionate?

Ultimately, whether the Home Secretary considered all of the above factors properly, as required in domestic and international law, is hard to answer. To answer the first question, yes, protecting NS is a sufficiently important reason to restrict fundamental rights. Regarding the second question, yes, the deprivation decision was connected; whether it was rational is unlikely due to the extremity. For the third question, no, the deprivation decision does not appear to have been the least restrictive measure available. Finally, to answer the fourth, it can certainly be argued that Shamima’s disadvantages were disproportionate compared to the aims pursued.

Anyone who would have deprived Shamima, with her unfortunate circumstances of how she got there and how she has since been, did not truly apply the proportionality assessment. The courts were restricted to how they assessed proportionality after the SC judgement in 2021 and, therefore, were unable to. Consequently, a fair balance was not struck.

### 3. Was the deprivation decision morally right or wrong?

When faced with a decision, an individual's moral compass comes into action. Morals generally refer to what someone perceives as right and wrong, and to decide this, an individual's personal experiences, family and religion (amongst others) are largely considered. Determining the morality of Shamima’s case is an essential part of the article, as it evaluates the sociology of the decision and how society has reacted.

There is little research regarding this. Discussing the morality of this decision may provide better reasoning, for and against the decision, and what could have been done to make it ‘more moral’. Shamima’s case has proved to be complex, causing great controversy within the public and political parties since 2015, especially since 2019.

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<sup>61</sup> UNHCR ‘1961 Convention on the Reduction of Statelessness’, Article 8(3)(ii).

<sup>62</sup> *ibid* Article 8(4).

<sup>63</sup> UNUDHR 1948, Article 15.

<sup>64</sup> [2023] UKSIAC 163 [301].

Whilst the previous chapter addressed that the deprivation was not proportionate, this chapter further signifies the problems with the case by highlighting how they are morally wrong too. It will be argued that Shamima and her son were detrimentally affected by the deprivation decision, thereby questioning the morality of the decision. To do this, news articles, political debates and non-governmental organisations' opinions will be cited.

This chapter will specifically explore the debate regarding the unfortunate death of Shamima's son, Shamima's safety, and political ambitions.

### Shamima's son.

It has been argued that Shamima's son, Jarrah, was failed by the UK by not allowing them to return.<sup>65</sup> Jarrah was born on February 17<sup>th</sup>, 2019, two days before Shamima's British citizenship was revoked.<sup>66</sup> On March 7<sup>th</sup>, 2019, Jarrah passed away from pneumonia due to the poor living conditions in al-Hawl camp.<sup>67</sup> Before Jarrah died, on February 21<sup>st</sup>, Shamima's family had written to Sajid asking him for assistance in bringing back their 'one true innocent' nephew, Jarrah, who should have been 'raised in the safety of' the UK.<sup>68</sup> In response, the Home Office stated that the Foreign and Commonwealth Office (FCO) considered 'requests for consular assistance', not them.<sup>69</sup> In an interview, the then Foreign Secretary Jeremy Hunt said that no attempts were made to rescue Jarrah, as sending British officials to a warzone was too dangerous.<sup>70</sup> However, given that Shamima was interviewed several times, Daniel Sandford argued that rescuing Jarrah was possible; another comment was made that 'this was an entirely avoidable death'.<sup>71</sup> Furthermore, the deprivation decision seemed to be the main cause for Jarrah not surviving, first because it is likely he would have had better medical treatment and also because he might never have fallen ill in the first place. Thereby, the reason why the UK did not rescue Jarrah proves invalid, and Sajid failed to protect Jarrah, especially by leaving him and Shamima in a dangerous camp.

### Camp conditions and Shamima's safety.

Diane Abbott pointed out that 'to leave a vulnerable young woman and an innocent child in a refugee camp, where we know infant mortality to be high, is morally reprehensible'.<sup>72</sup> The camp conditions have been said to 'amount to inhumane treatment and even torture';<sup>73</sup> leaving

<sup>65</sup> Ashley Cowburn, 'Shamima Begum: Sajid Javid facing outrage as death of Isis bride's son labelled 'stain on the conscience' of government' (*Independent*, 9 March 2019) <<https://www.independent.co.uk/news/uk/politics/shamima-begum-dead-son-sajid-javid-uk-citizen-isis-bride-passport-a8815096.html>> accessed 11 November 2024.

<sup>66</sup> Tom Pilgrim, 'Shamima Begum timeline: From flight to Syria to citizenship legal battle' (*Independent*, 23 February 2024) <<https://www.independent.co.uk/news/uk/crime/shamima-begum-sajid-javid-syria-british-kadiza-sultana-b2501308.html>> accessed 18 November 2024.

<sup>67</sup> Martin Chulov, Nazia Parveen and Mohammed Rasool, 'Shamima Begum: baby son dies in Syria refugee camp' (*The Guardian*, 9 March 2019) <<https://www.theguardian.com/uk-news/2019/mar/08/shamima-begum-confusion-after-reports-newborn-son-may-have-died>> accessed 15 November 2024.

<sup>68</sup> 'Shamima Begum: Letter from family to the Home Secretary' (*BBC*, 21 February 2019) <<https://www.bbc.co.uk/news/uk-england-47326715>> accessed 13 November 2024.

<sup>69</sup> 'Shamima Begum: IS teenager's baby son has died, SDF confirms' (*BBC*, 8 March 2019) <<https://www.bbc.co.uk/news/uk-47500387>> accessed 13 November 2024.

<sup>70</sup> 'Shamima Begum: 'Not safe' to rescue IS bride's baby, says Hunt' (*BBC*, 10 March 2019) <<https://www.bbc.co.uk/news/uk-47512659#:~:text=The%20child%20died%20in%20a,brides%22%20and%20get%20them%20out>> accessed 14 November 2024.

<sup>71</sup> text to n 69.

<sup>72</sup> text to n 65.

<sup>73</sup> Yasmine Ahmed, 'The UK Supreme Court Has Failed Shamima Begum' (*Human Rights Watch*) <<https://www.hrw.org/news/2021/03/02/uk-supreme-court-has-failed-shamima-begum#:~:text=Leaving%20them%20in%20detention%20camps,served%20by%20undermining%20human%20rights>> accessed 26 December 2024.

vulnerable young people there cannot be considered moral. Knowing that three of Shamima's children had now died proved how bad the camp was. Although Jarrah died in al-Hawl camp, the camp which Shamima is currently in, al-Roj has been said to be the 'most dangerous' in Syria.<sup>74</sup> Therefore, leaving Shamima and Jarrah in such conditions cannot be considered moral, further suggesting that the deprivation decision was not based on moral grounds but was driven by Sajid's 'own personal political objective'.<sup>75</sup>

#### "Political Ambitions" of the Home Secretary?

Tasnime Akunjee, Shamima's lawyer in 2019, claimed that the decision was made to enhance Sajid's ambitions of becoming Prime Minister.<sup>76</sup> This was supported by Lord Macdonald: 'so intent on apparently furthering his leadership ambitions that he lost sight of sovereignty, ... incapable of regulating' his citizens.<sup>77</sup> Moral behaviours have been described as 'the actions of a person who takes into account in a sympathetic way the impact the actions have on others'.<sup>78</sup> From this definition, one may conclude that not bringing back Shamima and Jarrah was immoral behaviour, as Sajid might be said to have not considered how revoking Shamima's citizenship left, not only her but also her son, incredibly vulnerable because he was more concerned with his personal advantage. Critics have also said that Sajid simply 'washed his hands' with Shamima and Jarrah to avoid the responsibility.<sup>79</sup>

However, Sajid argued that he was putting national security over Shamima and her son,<sup>80</sup> which, in turn, can be considered moral as he was essentially protecting the British people. In an extreme sense, the infamous moral dilemma known as the 'trolley problem' can be referred to, concerning the difficult question of: would you allow five people to die in order to save one, or would you allow one person to die to save five? There's no easy answer to this. For this case, it could be translated to: would you rather leave Shamima in another country, which is claimed to be safer for the UK's NS, or would you be willing to risk allowing her back so that she can face trial, which would also help protect her newborn? As mentioned, many different factors will influence the way a person answers this question. Morally wise, it depends on the individual.

#### A Morally Wrong Decision.

From the above arguments, the deprivation decision can be concluded to be morally wrong for three reasons. First, the decision led to the death of an innocent child, when the child could have been rescued instead, especially if the deprivation had never happened. Secondly, the decision also left Shamima in very dangerous conditions and, morally, no one should be left there, especially a mother and her child. Finally, on a trickier level, there were likely personal motivations which led Sajid to the decision and is, therefore, not morally considering the impact, but selfishly making the decision. It is important to note that there are many other questions to consider in morality here, especially on the motivations behind the decision, but

<sup>74</sup> Aya Ezz, 'Al-Roj: Syria's most dangerous camp' (*The Portal*, 24 October 2021) <<https://www.theportal-center.com/2021/10/al-roj-syrias-most-dangerous-camp/>> accessed 21 December 2024.

<sup>75</sup> Hanna Yusuf and Steve Swann, 'Shamima Begum: Lawyer says teen was groomed' (*BBC*, 31 May 2019) <<https://www.bbc.co.uk/news/uk-48444604>> accessed 4 December 2024.

<sup>76</sup> *ibid.*

<sup>77</sup> Jamie Doward, Mark Townsend and Nosheen Iqbal, 'Shamima Begum Sajid Javid labelled 'moral coward' over baby death' (*The Guardian*, 10 March 2019) <<https://www.theguardian.com/uk-news/2019/mar/09/sajid-javid-moral-coward-death-begum-baby>> accessed 19 December.

<sup>78</sup> <https://www.ncbi.nlm.nih.gov/books/NBK210003/>

<sup>79</sup> 'The Difference of Being Human: Morality' in John C. Avise and Francisco J. Ayala (ed), *In the Light of Evolution*, vol 4 (National Academic Press (US) 2010).

<sup>79</sup> text to n 77.

<sup>80</sup> *ibid.*

for this article, they are not required. When considering what the right thing would have been, bringing Shamima back for investigation is likely the answer. However, this is just a possibility.

#### 4. Conclusion

The above research illustrates the tensions between human rights and national security; these tensions are particularly high in Shamima Begum's case. These tensions have, and will, continuously appear, especially where national security, human rights or terrorism (or all) are involved.

Striking a steady balance may seem easy at first glance; however, as Chapter One has demonstrated, it is far from easy. The principle of proportionality is crucial for cases like Shamima's. Although the courts were limited in the way they could apply the principle, especially after the Supreme Court's ruling in 2021, when applying the assessment independently from the courts and Security Services, the fundamental objective is achieved: a fair balance. As discussed, the deprivation decision is not proportionate as there is no fair balance between Shamima's rights and disadvantages compared to the risk she was assessed the pose. Especially considering that there was an alternative option, which is what was done many times before Shamima: investigating her in the UK and, if needed, prosecuting her as well as providing rehabilitation.

Regarding the morality of Shamima's case, there are a lot of different views which could have been discussed. However, to further support Chapter 2's findings, Chapter 3's argument was that the deprivation case was immoral. The unfortunate death of Shamima's third child, Jarrah, caused a nationwide debate regarding whether the deprivation decision was fair and right. It was found that the UK government had let down Shamima and Jarrah, especially by leaving them in such conditions, which consequently led to the death of Jarrah. Furthermore, over the years, many different perspectives have been shared, not only from the UK but worldwide, signifying the importance of this case.

This research is important for future cases; public bodies should address the findings of this article and consider alternative ways for dealing with individuals like Shamima.

For the purpose of this article, it is worth noting the limitations faced when conducting this research. First, Bangladeshi laws are not 100% accessible, nor are Bangladeshi media reports; and secondly, the reasons behind some judgements within Shamima's legal battles are not always clear; and finally, the limited word count of 7500 does not allow going into detail as much as one would have liked. Besides this, the topic has proven to be very interesting, although complex.

It is important to make future recommendations after this thorough research. Further research on the motivations behind Sajid's motivations could be carried out to determine whether this was more politically driven than acceptable. Research on the other alternatives in this case is recommended to gain greater insights into what can be done to avoid these tragic cases.

On a final note, this research should have filled a significant gap in the existing literature on this case and topics of law and morality. Two very different perspectives have been given, both of which have provided similar outcomes.