

Human rights act bill of rights essay sample

Law



Human Rights Act/ Bill of Rights Essay Sample

The Human Rights Act 1998 (HRA 1998) is the single most effective piece of legislation, passed in the United Kingdom, which enforced the principles set out in European Convention on Human Rights in British domestic courts. A brief history as to the enactment of such a profound piece of legislation will help us understand the importance of the Human Rights Act 1998, and reasons the current coalition government would consider replacing the Human Rights Act 1998 with a British Bill of Rights and Responsibilities. After World War 2, and the barbaric atrocities of the Nazi holocaust, European politicians and jurist were convinced that there was a need to forge a new Europe. The foundation of the Council of Europe was inspired by the need to guard against dictatorship, avoid risk of another war and to provide a beacon of hope.

The first task was to establish rights for individuals against sovereign states. The code of the European Convention of Human Rights (ECHR) was formed, and the European Court on Human Rights (ECtHR) was established and located in Strasbourg. This treaty was signed by member states. However, British nationals who wanted to enforce their rights did not have any recourse in domestic courts and had to travel to Strasbourg to bring a case if rights were infringed upon. It was time consuming, far and expensive. The enforcement of the HRA 1998 effectively, ' Brought Rights Home'. ART 2 Right to life, ART 3 freedom from torture, ART 4 Prohibition of Slavery, ART 5 right to Liberty, ART 6 Right to a fair trial, ART 7 Prohibition of retrospective legislation, ART 8 Right to private and family life, ART 9 Freedom of conscience and religion, ART 10 Freedom of expression, ART 11 Freedom of <https://assignbuster.com/human-rights-act-bill-of-rights-essay-sample/>

Assembly, ART 12 Right to marry and found family, Art 14 Freedom from discrimination. Over the years, post 9/11, it has become great concern that the HRA did not only enforce rights of ALL, but it also laid down human rights for the undeserving. It has gained bad press as a charter for terrorists, criminals and immigrants, *Hirst v UK* voting rights for prisoners, *A v Home Secretary of State* 2004 foreign nationals suspected of being terrorists and *Chahal v UK* deportation of a foreign national. The judgments in these cases, in favour of protecting human rights and not supporting the concept of parliamentary sovereignty shows how the HRA 1998 significantly enhanced the role of the judiciary, and poses important questions about ‘legal constitutionalism’, the separation and balance of powers and the appropriate scope of the court’s jurisdiction.

A quote from Vernon Bogdanor, ‘issues in the past, which were decided politically, by ministers who were accountable to Parliament, are now being decided by the courts.’ helps us understand one reason why government would want to repeal the HRA 1998. The impact of the HRA 1998 did not only enhance the role of the judiciary in terms of interpreting the intention of Parliament (section 3) but also gave the judiciary the power to declare legislation incompatible (section 4). Even though a declaration of incompatibility would not render legislation invalid it would ‘deliver a fatal blow to Parliament’s handiwork’ – Professor Bradley. Even though there have been some negative impacts (in the eyes of Government) when judges have interpreted legislation, which breached human rights (giving rights to terrorists and criminals), the concept of Parliamentary sovereignty prevailed. The result of the *Chahal* and *Malone* cases influenced legislations such as the

Anti Terrorism Crime and Security Act 2001 and the Interception of Telecommunications Act 1985 respectively. Not only has there been friction between Government and the Judiciary about decisions on cases based on infringement of human rights, there are internal difference in the way judges think as well. In the Belmarsh Case, The House of Lords quashed the Derogation Order 2001 and declared that S 23 was incompatible with Article 3 and 14 of the ECHR. The question was the legality of the Derogation Order, which could be used if there was a threat to the nation.

The majority of the judges agreed that it was lawful (8: 1). Lord Bingham said that this 'situation is for politics and not the courts', Lord Hoffman's view that 'the real threat came from laws like these' and it was for 'Parliament to decide whether to give the terrorist such a victory'. The HRA 1998 works well allowing checks and balances for the judiciary and government. If there is a flaw in legislation and it is declared as incompatible, it does not render it invalid but Parliament has the opportunity under Section 10 to amend legislation. If rights are infringed upon, government can pass new legislation. HRA 1998 has indeed enhanced the powers of the judiciary, but it also left the Parliament Supreme. A bill of rights could build public confidence in legal protection of civil right, It would be symbolic and have an emotional appeal. It would give an opportunity to enshrine conventional rights and to give status as convention rights. On the other end of the spectrum, it could dilute human rights and limit powers of the ECtHR, and there would be constitutional consequences for the United Kingdom as well.

Professor Klug believed that introducing, in the present political climate, a Bill of Rights which is based not on the principles of universal human rights
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but on chauvinism and nationalism would be much less than what we have now. There is a strong possibility that a Bill of Rights will be enacted and may replace the Human Rights Act 1998 or may supplement it as well. If the Human Rights Act is replaced by a Bill of rights, litigants would lose their ability to rely on the ECHR in domestic Courts. It could be argued however, that the principles and standards that were part of the Human rights Act 1998 are now absorbed in the common law, which could be enforceable by Judicial Review. Change may be good but is it necessary?