

A simple guide to the human rights act 1998

[Sociology](#), [Human Rights](#)



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Introduction

In this essay I have examined the overall impact of the introduction of the Human Rights Act 1998 (“ HRA”), after its long campaign to infiltrate UK law. First this paper will begin by discussing the traditional British approach to protecting human rights before the HRA. Second this paper will examine the UK case law on human rights violation that went to the Strasbourg.

Third this paper will examine what impact the HRA has had on human rights protection. Fourth this study will examine the problem with the current system of protection such as no horizontal protection between private persons and lack of entrenchment. Fourth this paper will advocate better protection can be achieved through a Bill of Rights. Lastly this paper will conclude its findings.

‘ Nonsense upon stilts’ – Bentham

Professor A V Dicey (1835-1922), a constitutional theorist argued that individual liberties were more effectively protected by parliamentary

sovereignty, an unwritten constitution and common law, than by a continental system with their constitutional codes and catalogue of rights[1]. His argument was that because rights were not written down, but endorsed by judicial rulings, it would be more difficult for government to take away liberties of people. On the contrary, many of the rights, which have been included in the written constitution of other countries, such as the USA, were rights, which, at common law, existed in the UK through the form of freedoms. Jeremy Bentham referred to the ideology of human rights as being sheer nonsensical. With no law there are no rights, you are on your own. If we want to have rights we need to create them. Rights are created by law and are manmade and synthetic. Bentham stated: “ Natural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense — nonsense upon stilts.”

Human rights violation that went to the Strasbourg

Several eminent peers, Lord Wade (in 1976), Lord Scarman, the former Law Lord (in 1988), and Lord Lester(in 1995) have attempted to introduce a Bill of Rights. Each attempt was based on the European Convention on Human Rights and Fundamental Freedoms 1950 (“ ECHR”), an international agreement to which the UK has been a signatory for over 60 years. Many cases were brought against the United Kingdom for breach of its obligations in regards to the convention, resulting in UK law sometimes having to be changed by Parliament so as to comply with our human rights obligations, a case was brought by prisoners in 2005 who were denied the right to vote. Although it is acknowledged that a ‘ margin of appreciation’ is allowed to individual member states when applying constitutional requirements, to

keep within their individual traditions, on this occasion the margin was too wide and therefore 'disproportionate'.

This kind of de facto Bill of Rights offered through European courts has proved to be a lengthy, inaccessible, expensive and unreliable form of remedy. It was not good for the UK's image abroad to be frequently found in error by a 'foreign' court, as it has been many times this is also supposed by Lord Irwin of Lairg The Lord Chancellor in a key role addresses to the conference on a bill of rights for the United Kingdom 4th July 1992.

" This Government's position is that we should be leading in the development of human rights in Europe, not grudgingly driven to swallow the medicine prescribed for us by the court in Strasbourg, when we are found in breach of the convention".

An example of this is *Malone v Metropolitan Police Commissioner*. Mr Malone's telephone had been tapped, there was no law forbidding them to do so as English law gives no general right to privacy. Other cases that elaborate the point of mishandling of power by the state are in *Abdulaziz v UK* (1985). The case alleged that British immigration rules discriminated against women, because men settled in the U. K were allowed to bring their wives and fiances to live with them here, but women in the same position could not bring their husbands and fiances into the country. Instead of amending the mistake of allowing husbands to live in the U. K they restricted both men and women bringing partners from abroad, ending the sexual discrimination but breaching human rights. Moreover, in *Jordon v UK* it was found Article 2 ECHR (right to life) had been breached, the investigation was flawed in the

circumstances surrounding the death of the claimant's son who had been killed by police. Such decisions have led to changes in UK law to prevent further infringement of Convention rights and amendments to legal procedures. For example the issuing of new prison rules in 1999, updating their management from the rules of 1964.

Incorporation of the HRA

The Human Rights Act 1998 received Royal Assent on 9 November 1998, and coming into force November 2000. This Act has incorporated the ECHR into UK law. The ECHR is based on the Universal Declaration of Human Rights, which was drafted after World War II, to prohibit further atrocities associated with war, and is a statement of values and standards of rights and responsibilities. The act only covers civil and political rights and freedoms such as the right to a fair trial (s6) and the right to respect for privacy and family life (s8). Arguably a Bill of Rights would be more comprehensive. It would in addition cover social and economic rights, things such as housing or employment. Despite this, the HRA is regarded by many as a good first step towards a Bill of Rights.

The Human Rights Act 1998 has adopted this 'affirmative resolution procedure' Lord Irvine talks about and it is exercised when human rights are infringed by incomplete British legislation, or even the absence of legislation. These kinds of cases have been restricted to the higher courts. A citizen whom has had their Human Rights breached can now get redress from domestic courts; the aim of the HRA as quoted by Lord Irvine is to 'Bring the rights home' avoiding the lengthy road to Strasbourg. The incorporation of

ECHR is to weave human rights into the existing fabric of legislative, executive and judicial responsibility. The establishment of a Human rights commission in October 2007 has helped to scrutinise legislation and bring individual test cases to court, they have produced papers and undertaken an educational role.

Critic of the HRA

Critics say the HRA has been exploited by lawyers promoting a 'compensation culture' with 'no win, no fee' promises. Citizens are more prepared to fight for their rights since the Access to Justice Act 1999 was introduced making it easier for them to take action to court. Jack Straw, the then Secretary of State for Justice Lord Chancellor, has called these lawyers 'unscrupulous ambulance chasers'.

Travellers and squatters use the HRA when faced with expulsion, you could say demanding privileged treatment at the expense of others. The same is the case when you look at criminals and prisoners demanding their rights ahead of the victims.

Although the UK legislator has every right to amend the HRA it seems from this that it would most definitely cause much legal protests.

This has now allowed the European Convention on Human Rights and fundamental Freedoms ("ECHR") 1950 to be enforced in the UK. In particular I will discuss whether the HRA has had a satisfactory impact on protecting human rights and whether it is vulnerable to repeal.

HRA and ECHR only deal with political and civil rights of a person or public body, such as freedom of expression, with no governmental expenditure unlike social/economical rights, which include welfare and social security and education at a cost to the state.

Has the Human Rights Act bettered the condition of liberty in Britain?

Before the Human Rights Act, liberty was described by Dworkin as “ill in Britain”.

The GCHQ case is a good example of where the government wrongly infringed individual rights even though it believed that such an infringement would protect security of the nation. The Government had banned the civil servants from being members of trade unions.

Following this decision senior judges supported the incorporation of the ECHR into UK law in the belief that minorities groups would gain protection from the “tyranny” of elected majorities by better protecting civil liberties. Although having the power of Judicial Review, courts largely looked the other way rather than trying to balance liberty against security.

The paradox here is that while in theory the principle of the rule of law protects individual rights, in practice these rights are vulnerable to erosion by the judiciary, executive and legislature. ‘Liberty is ill in Britain’ YET this is the land of the free.

Judges are being given more power YET they failed to use their existing powers to stop the decay of liberty.

The HRA is said to be a weak sedative to a terminal condition. Although the act exists, the courts are limiting its application in a number of ways. Courts can interpret legislation with effect to the convention rights (s3) but they are using this interpretative obligation too narrowly. They have the power to make declarations of incompatibility (s4) but they are reluctant to use this power.

Although these judicial failures are acknowledged, they are not addressed. Despite the incorporation of convention rights, the domestic courts continue to follow their previous approach in times of crisis. As a result Convention rights cannot stop the unstoppable state powers, including police stop and search warrants. In times of emergency the courts do not and will not protect the individual from the state. It will take more than the incorporation of convention rights to change the judicial role

Solutions of HRA

The HRA is a piece of legislation and not entrenched like the Bill of Rights (“BOR”) in USA therefore, as with any act of Parliament, could be repealed. Although in reality ramification could be an issue as rights under the signed Convention have now been greatly highlighted to citizens.

After nearly two hundred years of debate over the UK having an ‘entrenched’ BOR the HRA was introduced, in lieu of Labour’s ‘second stage BOR commitment’ receding. The then Home Secretary, Jack Straw, described it as “the first BOR this country has seen for three centuries”.

The New York Times heralded the Act's arrival with the headline " Britain Quietly Says it's Time to Adopt a Bill of Rights" commenting that, finally, " ordinary Britons" will have a set of fundamental rights " similar to those guaranteed by the [US] Bill of Rights".

Conservative belief was that an entrenched BOR would be lethal for the doctrine of ' parliamentary sovereignty' as one Parliament will be able to bind its successor, traditionally not practiced. Contradictorily, the original English BOR of 1689 established the concept of parliamentary sovereignty by curbing the powers of the Crown.

However, David Cameron, also conservative, has for many years been campaigning for the introduction of a British BOR. It had been brushed under the carpet for 18yrs until the Labour Party came into power. Labour were in favour of constitutional reform resulting in the Constitutional Reform Act 2005.

The late Labour leader, John Smith, had committed his Party to support a British BOR in February 1993 as part of proposals to " restore democracy to our people - for what we have in this country at the moment is not real democracy; it is elective dictatorship". Smith stated that " the quickest and simplest way" of introducing " a substantial package of human rights" would be to pass a Human Rights Act " incorporating into British law the European Convention on Human Rights,". Our government, but not our courts, were bound by the ECHR since the post-war Atlee government ratified the ECHR in 1951.

In 2008 Cameron spoke out saying that the HRA has become a 'villains charter' and should be scrapped as criminals and terror suspects were using it as a shield, claiming their rights were being violated whilst in custody. The Police also showed reluctance to publish pictures of wanted criminals for fear of breaching right of privacy.

This notion was backed by the then Justice Secretary Jack Straw, a key architect in the creation of the HRA during the height of Labours Constitutional reform period. Both have criticised 'nervous' judges for failing to interpret the HRA adequately, for example not deporting terror suspects despite having the backing of ministers saying it was of national interest to do so. Home Secretary at the time Jacqui Smith also reinforced the notion that the HRA had made it difficult for their removal.

Cameron's call for a British BOR envisaged judges to 'operate on principles of proportionality'. Straw wants to keep the HRA but wants a rebalance of the rights set out, citizens to 'obey law and be loyal to the country'.

Cameron's viewpoint was that an entrenched BOR, giving citizens broad outlines to entitlements and values, would insure that citizen's rights would be guarded and not be subjected to repealed or changed with ease, as is the case with any act of Parliament. He believed it would also restore supremacy of Westminster over laws that seemed to have been imposed by Europe.

Conclusion

In reality Dicey's view, which promotes the common law's central role in protecting 'liberties', and Parliament Acts both run parallel in the protection of human rights.

In conclusion the Human Rights Act 1998 is a definite good first step towards a Bill of Rights, a possible second step in adopting a Bill of Rights would be to partly entrench ECHR so that it can be treated in the same way as EU law is today.

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