

Constitutional and judicial review

Law



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Constitutional and Judicial Review Introduction: The Human Rights Act of 1998 became a part of the domestic law of the United Kingdom on October 2, 2000 and in that process made the European Convention on Human Rights applicable in the United Kingdom. The Human Rights Act of 1998 thus makes it possible to raise issues relating to the European Convention on Human Rights in the courts across the United Kingdom. The affect of this is expected to nurture a culture of rights and responsibilities in the United Kingdom. It also has its consequences on the courts in the United Kingdom and the sovereignty of Parliament in the United Kingdom.

Human Rights Act of 1998 and Parliamentary Sovereignty:

The Human Rights Act of 1998 has led to controversy with regard to parliamentary sovereignty and its ability to enact laws that it desires without the courts looking into its validity. Section 3 of the Human Rights Act has a direct influence on this as it propounds that the courts are duty bound, as far it is possible to interpret legislation in such a manner that accord is given to the European Convention. This is the section that comes into play should there be any doubts on the legislation. The logic behind this is that Parliament would not contemplate any action that is not compatible with the European Convention.

Arguments in favor of the Human Rights Act of 1998 being consistent with the traditional understanding of parliamentary sovereignty include the argument that parliament can choose to act in a manner that is incompatible with the European Convention, if it so desires and is only bound to announce the incompatibility, should it choose to do so. The argument stretches further in that the Human Right Act of 1998 does not permit courts to strike down any primary legislation and can do so in the case of secondary legislation.

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The power vested in the courts in the case of primary legislation, by the Human Rights Act of 1998 is limited to declaring that the legislation is incompatible with the European Convention and parliament may choose to amend it, if it so desires.

Counter arguments are however there and this is to the effect that the Human Rights Act 1998 does give the courts the right to strike down any legislation that it feels is incompatible with the European Convention by stating so. The courts may not choose to exercise this option and may prefer to interpret it as far as possible as required by Section 3 of the Human Rights Act of 1998. Yet the decision lies with the court in choosing whether exercise this to option and call for amending the legislation. This is contrary to the traditional understanding of parliamentary sovereignty and should the courts choose to exercise this option it would lead to a constitutional crisis.

(Gillespie, A. Alisdair. Human Rights Act 1998: The 5 Minute Tour).

British courts feel bound to display Acts of parliament that are inconsistent with the European Law, but not those that are inconsistent with the European Human Rights law, because all twelve articles except Article 13 of the principal Convention articles have been included in the Human Rights Act of 1998. The leaving out of Article 13 was intentional and the official position for not including this article in the Human Rights Act of 1998 is that the Act itself is Article 13 and provides the necessary measures for any citizen to seek relief in case there are of any breaches. It must also be remembered that any citizen of the United Kingdom as a citizen of the European Union can approach the European Court of Human Rights for relief in case of any breaches. (Gillespie, A. Alisdair. Human Rights Act 1998: The 5 Minute Tour).

Literary Works

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Gillespie, A. Alisdair. “ Human Rights Act 1998: The 5 Minute Tour”. WORLD LAW/United Kingdom. JURIST Legal Intelligence. 29 Nov. 2005. .