Clri reserch sample

Parts of the World, European Union

Clri reserch sample University of London Essay Title: “ The HRA 1998 is being used for purposes not originally intended by its proponents. " The reason behind origination of the Human Rights: European Human Rights law is not the product of single monolithic mechanism. Instead several institutions played a significant role in order to establish mechanism for protecting human rights. Among these the role of at least two organisation is worthy of consideration: THE COUNCIL OF EUROPE and THE EUROPEAN UNION (EU). The Council of Europe is the oldest one and played the most significant role in promoting Human Rights at the European level. The European Union which remains politically the most viable and influential body, has had only an indirect part to play in protecting human rights. However, with rapid changes of time, increasingly human rights issues are being absorbed in to the program of the rapidly expanding EU. During the Second World War (1939-1949) Europe had been the scene of most serious human rights violations. At the end of the war it had become a major objective of the amalgamated powers to punish those who had been involved in crimes against humanity during the war and to uphold human rights in the region. Human rights treaty was meant to act as a bulwark against the recurrence of the worst form of human rights violations.. Thus this law was formulated to protect the rights and interest of the weak and vulnerable from the hands of the cruel aristocratic dictators. Although Britain was centrally involved in drafting the European Convention of Human Rights in 1950, individual citizens were only granted the right of individual petition 1965. The British approach prior to the incorporation of the Human Rights Act, 1998: Before this authority was granted, it was only possible for the citizens to enforce the rights by applying

to Strasbourg. Prior to the incorporation of Convention rights through the HRA 98 Act, the British courts always used to consider these rules as an aid to interpretation and no more than that. An example of this instance can be found in the case law of Derbyshire Newspaper. Historically, Britain had a tradition of civil liberties popularized by late nineteenth century writer A. V. Dicey. It was asserted by him that although Britain did not have the rights that were guaranteed by a “ written constitution" they had liberties. They could do anything which was not prohibited by law. Cases like Entick v Carrington suggest that the notion affirmed by Dicey was true because the courts would intervene whenever government officials would try to suppress the civil liberties of the citizens of the State by implementing rules that were not backed by any statute or common law tradition. However, this academic forgot to take into consideration that this particular rule is also applicable in case of government. Therefore, as a result government may violate individual rights and freedom even though it is not formally empowered to do so, on the ground that it is doing nothing that is prohibited by law: Malone V Metropolitan Police Commissioner, . Moreover, another difficulty to the British approach is that liberty is particularly vulnerable to erosion. The role of judges prior and after the incorporation of Human Rights Act, 1998: The common law recognizes that people are free to do anything which is not unlawful, but is powerless to prevent new restrictions from being enacted by the legislature. Paradoxically, many restrictions on liberty were imposed by the common law as judges in order to ensure that they do not trespass on the province of Parliament used to adopt literal approach whilst interpreting statutes enacted by Parliament. To many it was a way of showing deference

to the will of the ultimate law making body. The judges preferred to stick to the rule even if the outcome revealed absurdity as in the case of Whiteley v Chappel. However, after the incorporation of the HRA 1998 which came into force in 2000, there had been many case laws which suggest that seeing that the verdict may result in absurdity judges adopted purposive approach as an aid to interpretation by giving reason that the court should upheld the intention of the parliament rather than to frustrate it. Seeing the political environment of the united kingdom and the presence of case laws like Mcgann, farrel and savage v UK (1995) , where the European Court of Justice held UK frequently liable for breaching the rights and freedom of human being, it may be concluded that the incorporation of Human Rights Act 1998 within the United Kingdom's jurisdiction were both inevitable and necessary. British approach after the incorporation of the Human Rights Act, 1998: After the enactment of the Human Rights 1998, through which certain articles of the European Convention of Human Rights were incorporated into the jurisdiction, most of the Human Rights critiques and lawyers showed their gratitude to the government by praising the initiatives taken by the government. However, as mentioned by Jack Straw in HUMAN RIGHTS LAW CONFERENCE 2008 that the sole reasons for which this Act is facing severe criticism are the attacks on twin tower and the bombing on Britain's rail station. Although terrorism is not a new problem, but after such instances it obtained a new dimension and definition throughout the world. Moreover, there he also mentioned that this act has been incorporated so that it represents the mass people residing in the United Kingdom. Currently more number of people are migrating in England therefore it was the urge of time

that the law of England should give recognition to certain rights and freedom of these people and at the same time ensure stability in law and order. Through this act they gave these people certain rights and freedoms like, the right to religion but also mentioned that this act has no special status as it not entrenched and parliament can whenever it wants may repeal the act.. The impact of the Convention Rights onto the UK jurisdiction after the enactment of Human Rights Act, 1998: To focus more effectively on the question it is necessary for us to look at the articles that has been incorporated within the jurisdiction through HRA1998 and its impact on the life of the citizens. Article 2 : it deals with right to life, by checking out certain examples it may be concluded that this article ensures the right to life of each and every human being even an unborn child avails this right as in the jurisdiction of the United kingdom abortion is considered to be an illegal act because it contradicts with the saying of article 2. A latest extension to this rule can be found in R (Smith) v Oxford shire Assistant Deputy Coroner (2009). Here the Court of Appeal considered the procedural aspect of article 2, In this case a soldier while servicing in Iraq lost his life as a result of heat stroke which he sustained by on duty at his army base. An inquiry was held but the coroner ruled that article 2 did not apply. However, when the issue reached the Court of Appeal; it was ruled that the members of the Armed Force were subjects of UK jurisdiction wherever they were, and that since the question had been raised as to whether there had been a systematic failure by the state to protect human life, it was necessary for the inquiry in to the deceased's death to satisfy the requirement specified in article 2. Article 3 of the European Convention of Human Rights (ECHR)

outlaws torture inhuman or degrading treatment or punishment. Case laws like Chahal v UK (1997) suggest that law lords fearing that ECHR may held UK liable for deporting an Indian citizen to his home land although knowing that the person may face inhuman torture gave their verdict against deportation. However, recently law lords on 2nd of February 2009 relying on a diplomatic assurance directed Home Secretary to deport suspected terrorists to their homeland on the ground that if they were allowed to remain in UK, they may deprive the citizens of the State from their right to life. Presence of such instance suggests that the procedure of securing one's right is inexorably linked with the violation of the rights of the other. Henceforth, the Government is trying to strike a balance between the protections of rights and ensure the adequate securities for the mass people but this does not mean that the State Agents can detain any suspected terrorist for without giving him the adequate reason because of which he was detained. They will have to comply with Article 6 of the Convention rights “ RIGHT TO HAVE A FAIR TRIAL". In Secretary of State for the Home Department v AF (No 3) (2009) the law lords again questioned the system of control orders introduced under the Prevention of Terrorist act of 2005 which was introduced in response to the House of lords ruling in A v Secretary of the State for the Home department (2004) . In the case the law lords declared that by not providing controlee with sufficient evidence to enable him to defend himself against charges breached his right to fair trial under Article 6. Moreover, law lords taking into consideration section 3 of the HRA 98 stated that it was the requisite duty of that trial court to ensure that the relevant law is read compatibly with the Article 6 of the Convention Rights .

It is often contended that the reasoning behind such an outcome is the existence of section 6 of the HRA 98. Here it is stated that it is unlawful for the public authority to act in a way which is incompatible with the convention rights and the courts and tribunals do fall under the definition of the public authority. Here it should be mentioned that the presence of the Act for the first time ensured that citizens can also file a claim against public authorities that have breached their responsibilities thereby making them accountable to the people. So it can be concluded till now what is seen it would be very much unreasonable to claim that this Act is acting in favour of a certain community after all suspicion can never be a concrete evidence relying on which it can be stated that the accused committed the offence. Moreover it contradicts with the rule relating to the presumption of innocence that is every accused should be presumed to be innocent unless and until he is being declared guilty by the court. Moreover such an incident give rise to a huge mental stress amongst the accused and often it is seen that it gets very difficult for them to continue with their normal life after getting back to society this saying can be backed by a latest example of Secretary of State for the Home Department v AF which is a judgment of 18th January 2010. Here the Court of Appeal was required to consider whether the control order should be quashed ab initio or whether the court should direct revocation of the control order with retrospective effect. Further, the court was required to consider whether a claim for damages arose out of the imposition of the control order upon him and whether the cost of proceedings should be recovered by the controlee. Regarding the revocation issue the court ruled that this should take effect ab initio. On the damage issue, the court ruled

that in making a claim for damages, the controlees in part be seeking to clear their names, which is a significant matter because there was a considerable stigma attached of having been the subject of a control order which showed that the Secretary of the State had reasonable grounds to suspect their involvement in terrorist related activities. If they were deprived of a remedy this would fail to give them an adequate remedy for the breach of article 6 found in earlier proceedings. On cost related issue the House of Lords ordered the secretary of the state for the home department to refurbish the victim in pecuniary terms for the cost of the previous proceedings. The control order being quashed, costs should also be awarded for the current proceedings. Many academics argue as article 13 had not been incorporated the courts used their discretionary power mentioned in section 8 of the HRA 98 to grant proper remedy to the victims. Conclusion: It was neither the intention of the Parliament to provide a discriminatory protection to the citizens of the State by creating a demarcation between the people of different origin nor it was the purpose to refrain the foreign citizens from attaining the benefit of this Act. Through the incorporation of the Act both the legislatures and executives have given the third organ of the State that is judiciary to interpret legislation in such a way that it will not violate the right of the human being. Moreover, through this Act the government intended to strike a balance between punishing to offenders and securing the rights of the innocent. Therefore, it would be very much unwise to say that it is favouring only a segment of people as it the end of the day even the ultimate law making authority realized that the power to curtail the rights and freedom of an individual should be utilized very much sparingly

because when an innocent comes out of the prison after serving the sanction that had been imposed on him, he/she faces a complete new world which is very much different from his own world. Nothing in the world will be able to refurbish their lost opportunities, not even the demand for resignation of the authorities. It is often contended that by detaining meritorious citizens the State is actually forgoing the effective utilization of resources. Henceforth, in my opinion the critiques who claim that HRA 98 had opened the flood gate for the culprits and represents loophole of law should rethink taking into consideration relevant circumstances and then come up to a conclusion.

Bibliography: 1. Hiliarie Barnett: The Constitutional And Administrative Law 2. The Politics of Common Law 3. Parliamentary debates 4. Speech of Jack Straw in Human Rights Law Conference 2008