

# The impact of hra law constitutional administrative essay

Law



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The European Convention on Human Rights (ECHR) was envisaged to prevent the repetition of the enormous Human Rights violation as experienced in World War II. United Kingdom being a signatory of this convention since the beginning, the government had strong reservation against it and its impact on the constitutional law[1]. It was a question before the parliament of how to enact this convention (ECHR) in the domestic law. As UK enjoys the status of dualist state, it has to endorse a domestic law so as to bring an international law in effect on a national scale. Thus as a result Human Rights Act 1998 was ratified and enforced in 2000. In his foreword to the Blackstone's Guide to Human Rights Act 1998 the then Home Secretary Jack Straw wrote, " The Human Rights Act 1998 is the most significant statement of human rights in domestic law since the 1689 Bill of Rights ... The Act will guarantee to everyone the means to enforce a set of basic civil and political rights, establishing a floor below which standards will not be allowed to fall." [2] However, this act has been up to much criticism as Baroness Hale said " It (HRA) has undoubtedly enjoyed a very poor press." Why is it that such criticism raised up against the HRA? Is not it a same kind of legislation put forward by the parliament as in many other cases? Does this criticism indirectly question the capacity of parliament which is known to be supreme?

## **PRE-HRA SCENARIO**

Let us first recall the pre-HRA position of United Kingdom. It is well known that before such legislation came on the scene, the civil liberties were protected by the common law that is much respected Judiciary. It is amongst the Albert Van Dicey's three aspects of Rule of Law that the rights and

freedoms are best protected under the common law (rather than the formal bill of rights). It is worth asking that to what extent the Judiciary was able to protect the rights and liberties of British subjects. In the case of *Malone v. Metropolitan Police Commissioner*[3] Sir Robert Megarry VC stated that in England a person has a right to do anything unless the law prohibits it. This was said in support of the Police Commissioner and thus undermined the right of Privacy which at that time had no roots in the British concepts. [4] Moreover before the Human Rights Act 1998 officially came into force the courts and parliament used to prohibit or ignore the legal actions brought against the public interest so as to save the public body or to avoid the public unrest in many other related cases[5]. For example in *Osman v United Kingdom*[6], the domestic courts provided immunity to the police and it was not until the European Court of Human Rights (ECtHR) intervened that the appellants got 'justice'. The ECtHR concluded that the decision in the context of this case is said to be biased as it provided very broad immunity to the public bodies and they further held that it was against the article 2 and article 6 of European Convention of Human Rights.

## **IMPACT OF HRA**

To move on our argument let us now consider the impact which Human Rights Act 1998 had on the community at large. The question in hand declares that it has had very little impact and failed to protect the liberties of British subjects. This might not be the case in reality.

## **Judiciary**

The introduction of HRA has originally given the judiciary a much greater role as far as the decision making is concerned. The section 3 of Human Rights Act 1998 instructs the courts to interpret the domestic primary and subordinate legislation with compliance to Convention rights set out by European Convention of Human Rights. If the legislation is not in compliance with the Convention rights then section 4 of Human Rights Act 1998 helps them out. Section 4 sets out that if the courts find that legislation is not passed in compliance with Convention rights they should pass a declaration of incompatibility against the legislation. However this declaration might not have any effect on the validity of the legislation. These sections might be the reasons of the support Human Rights Act 1998 has developed from Judges. Lord Phillips has stated regarding the Act, " an outstanding contribution to the upholding of the rule of law in this country." [7]

## **British Subject**

The Human Rights Act 1998 not only effected Judiciary but it also had an impact on the subjects of Britain. The articles 2 (right to life), 5 (right to liberty), 6 (right to fair trial), 8 (right to privacy) and 10 (right to freedom of expression) have given a solid base on which they can avail justice. In *A v. Secretary of State for The Home Department* [8] the House of Lords had held that the indefinite detention of the foreign suspected terrorist is against the Article 5 (right to liberty) of ECHR (Schedule 1, Part 1 of the Human Rights Act 1998). Moreover in *Michel v. The Queen* [9] the Judicial Committee of Privy Council held that the constant intervention of the judge was against the Article 6 (right to fair trial) of ECHR (Schedule 1, Part 1 of Human Rights Act

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1998). However as far as Article 8 (right to privacy) and article 10 (freedom of expression) are concerned, the English courts have face difficulty in interpretation. The leading cases for such conflicts include Douglas v. Hello! Ltd<sup>[10]</sup> and A v. B<sup>[11]</sup>. In Douglas v. Hello! Ltd the Court of Appeal held that individuals had a right of personal privacy which was grounded in the equitable doctrine of breach of confidence. However in A v. B the Court of Appeal said that any interference with freedom of press should be justified and could not be limited until there was no identifiable public interest in the material being published.

## **Parliamentary Sovereignty**

In views of many the Parliamentary Sovereignty is somehow undermined by the introduction of Human Rights Act 1998. The section 3 and 4 allows the interpretation of legislations to be done in compliance with the Convention rights and if it is not in compliance than the declaration of incompatibility shall be sought. It, one way or another, does threatens the supremacy enjoyed by the Legislature. However Section 4(6) of Human Rights Act 1998 provides some condolence to the Parliament by stating that the validity of their legislation will not be affected by such declarations. It is essential to note here that Human Rights Act itself is a parliamentary legislation and can be amended or repealed if some conflicts arose.

## **WILL REPEAL HAVE ANY CONSEQUENCE?**

We are now to consider the effects the repeal of the Human Rights Act 1998 might have on the atmosphere of United Kingdom. It is to be clearly noted here that Human Rights Act 1998 enjoys an immunity from the Doctrine of

Implied Repeal as set down by the case of *Thoborn v. Sunderland City Council*[12]. In this case Laws LJ stated " Ordinary statutes may be impliedly repealed. Constitutional statutes may not...." It is widely known that HRA 1998 does have a benefit of being a constitutional statute. Thus to repeal it there has to be an express procedure which is to say another act overruling it and taking its place. It is however in planning of the Conservative Party to expressly repeal the controversial act as they have taken steps towards it by creating a ' Commission on Bill of Rights' as said by the Parliamentary Secretary of Cabinet office Mark Harper[13]. Nevertheless they do realize that it will not be a legally easy task to conduct as it would remove the protection of human rights under UK and also it would create a drift between the judiciary and parliament.[14]Conversely, the repeal of this criticized piece of legislation will open up a space in which the common law will have a much required time to expand.[15]This space might be tough to handle as there will be much unrest internationally and nationally but this toughness will not last very long. This is because the following reason[16]: The European Charter of Human RightsFollowing the Lisbon Treaty which was incorporated in 2009 all EU members now have to consider this charter in advance before judging any case related to Human Rights. The Domestic Application of Human Rights. As it is known that treaties signed internationally have a direct effect in the domestic law of United Kingdom. Thus when a conflict arises the UK has to comply with the requirements of the international law as said in Section 2(1) and (2) of European Communities Act 1972 and Section 3(2) of Human Rights Act 1998. The Expansion of Human RightsSince the development of the Doctrine of

Purposive Interpretation the courts are now capable enough to interpret what is required from them. They now know their duties as expected from them internationally and domestically.

## **CONCLUSION**

To say that repeal of Human Rights Act 1998 will have no effect is somewhat a very unsympathetic thing to say. The citizens of United Kingdom look upon it with a great optimism as they have it in mind that now they have a foundation on whose backing they can take actions against the other individuals or the public bodies who, in their sight, infringe their rights. The courts too look upon Human Rights as a much helpful tool in reaching the decisions of many complicated cases. Human Rights Act 1998 along with the judge's skills of interpretation makes it very much easy for the courts to comply with the intention of the parliament and conform with the requirements of the International law. Although Human Rights Act 1998 have not been much successful in providing the rights as expected but it should be given time to settle down in the environment. The idea of repeal will not be beneficial at this stage as it will lead to political unrest and the present government might lose the support of the electoral