

Introduction

The liberal democracies of the world today are anchored on a number of principal precepts of governance. One such precept is the ability to uphold and protect human rights. In order to effectively do so, a state must ensure that part of its governance mandate entails a robust framework that anchors the equality of its citizens and its residents. Thus, these features call for a human rights regime. As a country, the United Kingdom has been without a formal written constitution since the Glorious Revolution of England in 1688. To this end, UK human rights law regime has been a combination of statute law as the highest authority of law, conventions, parliamentary procedure, and common law. To better protect human rights, the UK adopted the 1998 Human Rights Act which domesticated the provisions of the 1950 European Human Rights Convention. The introduction of the Bill of Rights Bill 2022 proposes a raft of changes that are likely to have far-reaching consequences on the rule of law and access to justice should it repeal the Human Rights Act.

The Bill of Rights Bill and the Human Rights History

The Bill of Rights Bill was introduced in 2022 with the aim of repealing the Human Rights Act of 1998. The Bill is intended at restoring the missing common-sense point of view to the human rights regime from a UK perspective. From the perspective of the framers, the Bill seeks to provide a robust safeguard and protection to the fundamental rights and freedoms of the people while also buttressing the public interest together with revamping the need to respect the will of Parliament as elected representatives. Essentially, the Bill seeks to retain the Convention Rights together with the ability of domestic courts to enforce them while retaining the UK's membership to the Convention and obligations on the government. Moreover, the Bill maintains the need for the actions of public authorities to abide by human rights provisions.

On the other hand, changes made by the Bill have far-reaching ramifications. To begin with, the Bill degrades democratic institutions and the United Kingdom's constitutional settlements. Restricting the power of the courts culminates in the centralization of power around the legislature. It also lifts off the duty of courts to take into account the ECtHR's interpretation of a right. It requires the courts to not only give priority to the views of parliament in balancing issues but also bars courts from establishing that a public body owed an obligation that needed them to proactively facilitate, protect, or fulfil a right. It also stops claims pertaining to human rights that accrue from operations by the military overseas. Moreover, the Bill imputes on the courts the duty to employ a literal or textual reading of the rights under the Convention. Finally, the Bill sets out a heightened threshold to be met regarding the deportation of offenders of foreign nationality.

The Bill negatively affects communities, families, and individuals by undermining the duty of the state to guarantee the protection of rights on account that a literal reading of the rights does not factor in the changing conditions in society. By limiting the ability of incarcerated persons to institute human rights claims, the Bill separates people and makes certain classes more deserving than others which is against the provision that human rights accrue to all on account that they are human. Moreover, by embarking on a collision course with the ECtHR, the Bill undermines the UK's democratic institutions. The Strasbourg Court had created rights that applied to all contracting states. The creation of divergent domestic rights will be costly for those who will have to rely on the Strasbourg Court for redress.

Historically, the UK has had a gradual but steady climb in the human rights strata for over millennia. While this walk has been both slow and cautious, the human rights gains made over these years have had tremendous impacts on the protection of fundamental human rights and fundamental freedoms. After the 1688 Glorious Revolution in England, the country opted to set aside the written constitution. As a consequence, the law was contained in several scattered documents. For example, Acts of Parliament were the highest authority of law and were supported by common law, parliamentary procedure, and conventions. The first documentation of human rights was contained in the 1918 Male Universal Suffrage that paved way for the hallmark sense of democracy.

Before the Male Universal Suffrage of 1918, the protection and safeguarding of fundamental human rights and freedoms was the purview of the Westminster Parliament. This was done by way of political consensus which, as was the case, was always a herculean task. In this model, Parliament had been afforded sovereign power pertaining to law-making. To do this, parliament employed a restraint model that was intended to both protect and enforce fundamental human rights and freedoms. This arrangement saw the Westminster Parliament enact a number of legislations that imposed a number of restrictions on some civil liberties. Some of the targeted liberties were security and counter-terrorism, activities related to trade unions, and free speech. However, the exercise of these restraints was delegated to public authorities that tended to exercise a wide-ranging discretionary power.

Subsequently, the European Union adopted the European Convention on Human Rights in 1950. The objective of the Convention was to provide a framework that would come in handy as far as the promotion and protection of fundamental freedoms and rights of individuals within Europe are concerned. Thus, the member states of the Union were obligated to domesticate the provisions of the Convention in order to give effect to it. This ratification would see individuals within the member states enjoy a wide range of fundamental freedoms and rights not limited to the freedom from torture and inhumane or degrading treatment, the right to life, the freedom of speech, the right to a fair trial, and the freedom from slavery and servitude among many others. To this end, the UK ratified the Convention in 1951 and formed part of the applicable laws of the UK to guide the protection and promotion of fundamental human rights and freedoms.

The interpretation of the Convention at the Union level necessitated the formation of the European Court of Human Rights based in Strasbourg in 1959. The purpose of the Court is to hear cases involving the breach of the human rights provisions set out in the Convention by a contracting state. Decisions by the Strasbourg Court had a binding effect on the contracting states and were used as precedents across the Union. Subsequently, the UK enacted the Human Rights Act in 1998. The Act incorporated the Convention into UK law and set out to guarantee the respect and protection of human rights within the UK legal regime. As a result, the human rights obligations contained in the Convention were given force and it required public bodies to be bound by those obligations and allowed individuals to use the UK courts to enforce the Convention rights.

In addition, the Act imputed obligations on government bodies and public services and bodies to not only uphold but also to respect the human rights and freedoms espoused therein. In the event of a grievance or infringement, individuals could seek redress from the national courts. Besides the Human Rights Act, the UK also adopted the European Communities Act in 1972 that, besides admitting the UK, was intended to give effect to policies and laws of the EU in the UK. This Act operated to buttress the rights of UK citizens within the Union such as the right to freely move and reside within the EU. In addition, it also guaranteed political rights such as voting in the EU. Finally, in 2018 following Brexit, the UK adopted the European Union (Withdrawal) Act 2018. The objective of the Act was to incorporate the Convention rights into UK law following the withdrawal to ensure the protections guaranteed by the Convention continued to apply in the post-Brexit era.

Conclusion

Whereas the Bill of Rights Bill 2022 has been hailed as culminating in determinable protection mechanisms and determinable human rights laws, it is likely to culminate in more friction than seamless legal procedures and institutions. This is likely to water down the historical gains that have been witnessed leading up to the enactment of the Human Rights Act 1998. Consequently, it will operate not only weaken the ability of the government and its institutions in enforcing human rights through the courts, but it will also lessen the degree of human rights protection. This is on account that it makes it cumbersome for individuals, families, and communities to access the courts in the event of a human rights violation. These impacts are retrogressive and will culminate in perforating the rule of law and thwarting access to justice.

Bibliography

Table of Statutes

Bill of Rights Bill 2022.

European Communities Act 1972.

European Union (Withdrawal) Act 2018.

Human Rights Act [HRA] 1998.

Table of Conventions

Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR (European Convention on Human Rights)) 1950.

Table of Books

Robert M, 'The British Conservative Party in the Age of Universal Suffrage: Popular Conservatism, 1918-1929.' (The Ohio State University Press, 1998).

Table of Journals

Aileen K, 'What's so Weak About "Weak-form Review"? The case of the UK Human Rights Act 1998.' 13.2 *International Journal of Constitutional Law* 13.4 [2015].

Andrew G, 'Some Questions for the United Kingdom's Republican Constitution.' 19.1, *Canadian Journal of Law & Jurisprudence* [2006].

Conor G, 'The European Court of Human Rights and the protection of civil liberties: An overview.' 52.1 *The Cambridge Law Journal* [1993].

David B, Fenwick H, and Harris-Short S, 'Judicial Approaches to the Human Rights Act.' 52.3 *International & Comparative Law Quarterly* [2003].

Francesca K and Wildbore H, 'Follow or Lead? The Human Rights Act and the European Court of Human Rights.' 6 *European Human Rights Law Review* [2010].

Gary C, 'Was the Glorious Revolution a Constitutional Watershed?' 72.3 *The Journal of Economic History* [2012].

Makau M, 'The Ideology of Human Rights.' *International Law of Human Rights* [2017].

Marc M, 'The Effect of Community Agreements in the United Kingdom under the European Communities Act 1972.' 28.2 *International & Comparative Law Quarterly* [1979].

Marjorie H. "Human Rights Act' reform: A Modern Bill of Rights.' 3 *European Human Rights Law Review* [2022].

Megan D and Smith K, 'UK diplomacy at the UN after Brexit: Challenges and Opportunities.' 19.3 *The British Journal of Politics and International Relations* 19.3 [2017].

Merris A, 'The Dialogue Between United Kingdom Courts and the European Court of Human Rights.' 61.3 *International & Comparative Law Quarterly* [2012].

Neal B, 'The Franchise in the United Kingdom 1885-1918.' 32 *Past & Present* [1965].

Philip N, 'Divided Loyalties: The European Communities Act 1972.' 30.1 *Parliamentary History* [2011].

Steve F, 'Reforming the Human Rights Act 1998 and the Bill of Rights Bill 2022' 27.1 *Coventry Law Journal* [2022].

Stuart W, 'Brexit and the Future of the UK Constitution.'" 43.3 *International Political Science Review* [2022].