

Human rights are:

- **Inalienable** means that they cannot be taken or given away.
- **Universal** human rights theory says that they apply to everyone simply by virtue of them being human.
- **Interdependent** means that each human right, in some way, contributes to a person's dignity. Each right relies on the others

They are also **indivisible** – they are inherent to the dignity of every human person, be they civil, cultural, economic, political or social issues. Common humanity is shared across the globe. All people everywhere in the world are entitled to them.

UK has a largely **unwritten constitution** and so human rights are protected by the **European Convention on Human Rights** which has been incorporated via the **Human Rights Act 1998**.

There is ongoing debate as to whether the HRA should be replaced by a **British Bill of Rights**.

ECHR is considered to be a 'living instrument'.

Compliance overseen by the European Court of Human Rights.

Rights in the ECHR considered:

- **Absolute** – e.g. art 6 right to a fair trial
- **Limited** – e.g. art 5 right to liberty
- **Qualified** – e.g. art 10 freedom of expression

Margin of appreciation – The European Court of Human Rights has some discretion in their decisions involving balancing competing rights. They can take a wide or narrow approach based on each state - **Handyside v. The United Kingdom, (1976)**.

Proportionality – courts have power to balance competing rights (particularly qualified rights).

Key provisions of the Human Rights Act 1998

- **S.7** – ECHR is **directly applicable** in UK courts. Citizens can still take their case to the European Court of Human Rights on appeal.
- **s.2** – Precedents of the European Court of Human Rights are **strongly persuasive** on UK courts. **Leeds City Council v Price** and **Ullah**.
- **S.3** - When deciding a case involving human rights, judges must interpret a law '**so far as is possible to do so**' compatibly with human rights. **R v A** and **Ghaidan v Godin-Mendoza**.
- **S.4** - If a statute cannot be interpreted broadly enough to ensure compatibility with Convention rights, under s.4 judges can issue a **declaration of incompatibility**. **Bellinger v Bellinger** and **R (on the application of Steinfeld and Keiden) v Secretary of State for the International Development**.
- **S.10** - If a declaration of incompatibility has been issued, Parliament has the power to change this quickly using a '**fast track**' procedure. **S.10(2)** - Parliament can change the law using the fast track procedure if there is a 'compelling reason'. However, the fact a declaration of incompatibility has been issued is not necessarily a 'compelling reason'.
- **S.6** – Individuals can sue **public authorities**.
- **S.19** - All legislation that is passed after the **Human Rights Act** came into force **should** have a statement of compatibility. **s.19(1)(b)** - a law can be passed without one. Ministers are not saying the law is 'incompatible', just that they are unable to declare it 'compatible'. Two Bills that did not have a statement of compatibility are: the **Local Government Bill 2000** and the **Communications Bill 2003**. Both are now Acts of Parliament.
- **S.8** - A court may grant 'any just and appropriate **remedy** within its powers'. (UK chose not to invoke art 13).

History

The ECHR was passed following the atrocities of the Second World War.

The **Council of Europe** adopted the **European Convention on Human Rights (ECHR)**.

The UK has since **incorporated** the majority of the ECHR into domestic law via the **Human Rights Act 1998**.

Overseeing states' adherence to the ECHR is the **Council of Europe**. Other institutions overseeing the ECHR are the **Committee of Ministers** and the **Parliamentary Assembly**.

Before the HRA 1998, Citizens' rights in the UK were '**residual**' - **Malone v Metropolitan Police Commissioner (1979)** case. Residual freedoms are quite easy to remove and difficult to enforce, therefore protection in the UK pre-**HRA 1998** was weaker.

Individual petition granted for UK citizens to the European Court of Human Rights in 1966. E.g. **McCann v UK (1995)**

Pre-HRA, the ECHR, not being part of domestic law, was not always binding as a source of law by judges in UK courts. In the case of **R v Secretary of State ex parte Brind (1990)**, Lord Acker said that, while unincorporated, the Treaty 'cannot be a source of rights and obligations'. Similarly, in **Derbyshire County Council v Times Newspapers (1993)**, the ECHR was considered useful as an **extrinsic aid**.

Bill of Rights debate

- Benefits
 - Entrenched – would have 'protected status' unlike the HRA 1998
 - Curb executive power
 - Clearer guidance for judges on balancing rights
 - Removal of fast track procedure
- Problems
 - Devolution settlements
 - Good Friday Agreement