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# HUMAN RIGHTS AND THE FREEDOM OF RELIGION

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The Human Rights Act 1998 (HRA) came into effect on 2 October 2000, giving power to the English courts to make legal decisions on basic liberties. Fifty years ago, Britain helped to enshrine our basic liberties into the European Convention on Human Rights (ECHR), a treaty passed by the Council of Europe. Following the Second World War, Sir Winston Churchill invited a group of nations to come together to stop such atrocities and acts of cruelty ever happening again.

The 1998 Act incorporated the ECHR into domestic law by providing a remedy in domestic courts for breaches of the ECHR. Former Foreign and Commonwealth Secretary the Rt Hon Jack Straw MP has described the Act as ‘the most significant statement of human rights in domestic law since the 1689 Bill of Rights.’

Mr Straw was confident that the Act would ‘strengthen representative and democratic government... by enabling people to challenge more easily the actions of the State if they fail to match the standards set by the ECHR.’

The Act was a consequence of the Labour government’s promise, in its 1997 election manifesto, to be a government committed to the protection of human rights.

The HRA has three main effects:

- It makes it unlawful for a public authority, such as a government department, local authority or the police, to breach the Convention rights.
- Cases can be dealt with in a UK court or tribunal and no longer need to be dealt with at the European Court of Human Rights in Strasbourg.
- UK legislation must now, where possible, be consistent with Convention rights.

The Act identifies 16 basic rights, all taken from the ECHR. These cover matters of life and death, such as torture and killing, the right to a fair trial, and what an individual is able to say and do, and, perhaps of most concern to Christians, to believe.

The HRA is intended to respect rights and to balance responsibilities. Most of the rights in the HRA have boundaries to prevent them unfairly affecting the rights of others. The Act means that we all have to accept some limits to our rights so that others are treated fairly. For example, the right to liberty may have to be restricted where an individual has committed a criminal offence punishable with a prison sentence.

Courts and tribunals must take into account Convention case law when determining questions which arise in connection with the Convention. However, Convention case law is persuasive and not binding, so that UK case law may legitimately diverge from Strasbourg case law.

The Act provides that, as far as possible, all existing and future legislation must be construed to be compatible with the ECHR. Moreover, when the meaning of legislation is ambiguous, obscure or may lead to absurdity, reference can be made to the records of speeches in Parliament as to the meaning of the legislation. Judges must interpret legislation as compatible with the HRA. Despite this, where this is not possible, the higher courts can grant Declarations of Incompatibility. The supreme legislative powers of Parliament are preserved. The courts have no powers to strike down Acts of Parliament which are manifestly inconsistent with the Convention.

Christians are likely to be most affected by legal decisions taken in the light of Article 9 of the ECHR, which states:

- 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*
- 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.*

Although the legal effect of Article 9 will be established gradually as more and more cases are decided, it is already clear that there is a divergence between what evangelical Christians would assume was meant by Article 9 and the way in which the court is interpreting it.

This is not surprising, given that the Home Office's own publication *Human Rights Act – An Introduction* asserts that 'Tolerance and broad-mindedness are the bedrock of democracy – and the bedrock of the Convention rights.' Christians cannot possibly agree with this assertion, and therefore will have some cause to fear that the Act may not assist Christians by upholding the practices which flow from their beliefs.

One example of this divergence is evident from the case of *R (Williamson) v SoS Education*. The appellants represented Christian independent schools and were seeking relief from Section 548 of the Education Act 1996 – a measure which outlawed corporal punishment in schools. The

appellants sought a relief which would enable parents lawfully to delegate to a teacher the right to administer physical punishment. In this case, the judge did not take the view that the reasons for the practice of corporal punishment were clear in relation to the beliefs being asserted.

However of far greater legal significance was the judge's pronouncement: 'Whatever conclusions as to the content and nature of their beliefs... Neither the teachers, in inflicting corporal punishment, nor the parents in supporting its infliction within the school, manifest those beliefs in the sense of that expression as it is used in article 9(1) of the Convention. Article 9 is not, therefore, engaged in this case in any event.

The relevant part of Article 9 relied on by the appellants is freedom to manifest religion or belief. Section 548 does not interfere with anyone's freedom to believe in, or to seek to persuade others to believe in, the merits of corporal punishment, whether on religious or secular grounds.'

The implication of this is that Article 9 would only apply if the teachers when inflicting corporal punishment, or the parents when supporting them in that action, were manifesting their religion or beliefs. What then, is Article 9 intended to protect?

In another case, *Kalac v Turkey* (1997), the Court said: 'Article 9 lists a number of forms which manifestation of one's religion or belief may take, namely worship, teaching, practice and observance. Nevertheless, Article 9 does not protect every act motivated or inspired by a religion or belief.'

It is a relief that Christians may still worship, teach, practise and observe, even though the secular Court cannot yet accept the practice of our beliefs in certain circumstances.

As further cases arise, it is possible to hope that the judiciary may be increasingly influenced by a better understanding of the link, in the presuppositions of evangelical Christians, between the principles of religious observance, and the outworking of those principles in Christian conduct. We must assert what we know to be true and continue to be guided by the word of God, in expectation that some of the recent depressing decisions of the judiciary will be overturned and reflect the laws of God as Jesus declared them.

Isabel Bathurst

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The Old Bank House, 17 Malpas Road, Newport, South Wales. NP20 5PA  
Telephone: 01633 893925  
Email: [office@affinity.org.uk](mailto:office@affinity.org.uk)  
Website: [www.affinity.org.uk](http://www.affinity.org.uk)

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