

Human Rights Act Reform: A Modern Bill of Rights

A consultation to reform the Human Rights Act 1998

Submission by René Cassin, the Jewish voice for human rights

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March 2022

About René Cassin

René Cassin, the Jewish voice for human rights, works to promote and protect universal human rights, drawing on Jewish experience and values.

We achieve this by campaigning for change in defined human rights areas – through a combination of advocacy, policy analysis, public campaigning and education and building the capacity of activists to promote and protect human rights.

Executive summary

Human rights are an integral part of the faith and tradition of Judaism. Freedom of thought, belief and religion are key to the life of the Jewish community.

Looking through the lens of Jewish religion, history, and values, we do not agree with the premise of this consultation. The Human Rights Act does not need replacing with a Bill of Rights. Indeed, the Human Rights Act is a Bill of Rights.

We reject the framing of the consultation with its focus on a division between the ‘undeserving’ and the majority. This weakens human rights protections and access to them for all and will be most keenly felt by minority groups. As a minority group, Jews have experienced within recent history of the results of such targeting. We equally have concerns for other minority groups.

The human rights framework that developed in response to the horrors of the Holocaust stress that human rights are universal and indivisible. This consultation negates this.

Introduction

René Cassin supports Liberty’s submission to the government’s consultation *Human Rights Act Reform: A Modern Bill of Rights A consultation to reform the Human Rights Act 1998*.

Our response, additionally, focuses on why the Human Rights Act matters to the Jewish community in the UK. This response is in answer to question 29 of the consultation.

Our understanding of human rights is based on Jewish religion, Jewish history, and Jewish values. Because of these we have a particular perspective on the international human rights framework in general and on the Human Rights Act in particular.

We welcome the confirmation that the UK’s international obligations as a party to the European Convention on Human Rights will be continued.

We are concerned that the consultation goes well beyond the recommendations of the [Independent Human Rights Act Review](#) (IHRAR). In addition, it omits the importance of an “effective programme of civic and constitutional education on human rights” (IHRAR p52-57). We believe the Human Rights Act provides important protection that more people would benefit from if they understood its workings.

We are very concerned that the consultation proposals will weaken current protections and reduce access to our human rights. The proposals throughout the consultation of placing greater emphasis on responsibilities, reducing rights and remedies for the ‘underserving’, and prioritising the interests

of the majority will weaken the protection of human rights, not strengthen them. This submission supports the details provided in Liberty's response such as proposals to:

1. Reduce the right to private and family life for immigration purposes (including the right to family life for children whose parents are deported) but this will also affect others.
2. Reduce positive obligations on public authorities
3. Adjust proportionality for qualified rights in favour of the state against the individual/minority groups
4. Limit what courts can do if rights are breached in terms of remedies and damages and in terms of striking down secondary legislation
5. Require permissions to show that an individual has suffered significant disadvantage before they can take a case

Below we detail why the loss of rights such as these is of particular concern to us.

1. Jewish Religion

“Human rights are an integral part of the faith and tradition of Judaism. The beliefs that man was created in the divine image, that the human family is one, and that every person is obliged to deal justly with every other person are basic sources of the Jewish commitment to human rights.” Monsieur René Cassin, 1974 (Co-drafter of the Universal Declaration of Human Rights)

a. Freedom of religion

Freedom of thought, belief, and religion (article 9) is clearly the right that most directly affects the Jewish community.

The right to practice Jewish religion or other faiths is essential. The Human Rights Act provides a mechanism to allow this to happen.

The key case that is directly relevant to the UK's Jewish community demonstrates this.

[Adath Yisroel Burial Society v HM Senior Coroner for Inner North London, 2018](#)

When in 2018 the Inner North London Coroner considered each case in chronological order of deaths ([the cab rank rule](#)) this conflicted with both Muslim and Jewish law to bury people within 24 hours. The [Adath Yisroel Burial Society](#) took the Inner North London Coroner to court claiming this was against the Human Rights Act. The judge agreed, declaring that this policy was unlawful as it was against religious freedom and had to be changed. The national Coroners' guidance was consequently amended to accommodate Muslim and Jewish religious law so that their burials could be expedited.

Whilst not relating directly to Jewish people, there are other key cases relating to freedom of religion, which can be read across as relevant to the Jewish community (taken from [BIHR's website](#)).

[Eweida v UK, 2013](#)

British Airways banned Nadia, a Christian woman, from wearing a crucifix on her necklace at her work in customer services. Although she failed in the UK courts Nadia won her case in the European Court of Human Rights. This ruled that Nadia's right to freedom of religion had been

breached. The court stated that in rejecting Nadia's case, the UK courts had given too much weight to the employer's corporate image and not enough to Nadia's right to wear a visible crucifix and manifest her beliefs.

[Ghai v Newcastle upon Tyne City Council](#), 2010

Mr Ghai wanted to be cremated through an open-air funeral pyre when he died, in accordance with his beliefs as a Hindu. UK law only permitted cremation within a building under the Cremation Act 1902. The UK court agreed that his right to freedom of religion was engaged. The court decided to define the term 'building' in the Cremation Act broadly, so the law would include 'buildings' or structures, which facilitated open-air cremation. This made the Cremation Act compatible with the rights in the Human Rights Act.

2. Jewish History

Knowing what happens to minorities who live in a culture where civil liberties are curtailed is enshrined in Jewish consciousness.

From a history of persecution by the state in many countries including Spain, the Middle East, North Africa and western Europe, the Jewish community understands why human rights laws are important.

International human rights law developed in response to the Holocaust; a practical expression of the necessity to ensure that nation states would never again be allowed to oppress their own citizens. Our namesake, Monsieur René Cassin, a French Jewish lawyer and judge, co-drafted the Universal Declaration of Human Rights in 1948 to set out the fundamental principles by which all human beings should be treated.

Jewish lawyers were also responsible for other key parts of the international human rights framework after the Second World War. The principles of crimes against humanity and of genocide, developed respectively by Hersch Lauterpacht and Raphael Lemkin, lawyers from Polish-Jewish backgrounds, were first introduced at the Nuremberg trials in 1946.

The Universal Declaration of Human Rights formed the basis for a stronger regulatory framework through the European Convention on Human Rights in 1951, which was then brought into UK law as the Human Rights Act in 1998.

The Human Rights Act is thus a legacy of the Holocaust and is a practical implementation of the cry that "Never Again" should a state exact such punishment on its own people. This is felt very deeply by the Jewish community.

Jews have thus had personal experience of the lack of human rights, developed human rights frameworks and, like other people, benefit from the safeguards human rights provide.

The consultation proposals suggest severing the link between domestic rights and those of the European Convention on Human Rights. René Cassin would be concerned were such a link to be broken because the European Convention on Human Rights is important to the Jewish community having been written in response to the Holocaust. Such a separation would also be a retrograde step

as it would result in more applications to the European Court of Human Rights, which are time consuming and expensive.

Accountability provides a mechanism of checks and balances that supports public confidence in the government. The current proposals would reduce the accountability of the government, increasing its power whilst lessening that of the judiciary. The Jewish community sees shifting the balance of power in this way as dangerous to all minorities.

These concerns are in the context of Jews currently being a target of continuous and unprecedented levels of anti-Semitic hate crime. [The Community Security Trust](#) (CST) recorded 2,255 anti-Semitic incidents across the UK in 2021, the highest annual total that CST has ever recorded.

a. Fleeing persecution

René Cassin works to promote and protect the rights of asylum seekers, especially those detained and deprived of their liberty for indefinite periods of time. Throughout history, Jewish people have been forced to seek sanctuary from persecution. As Jews, the experiences of displacement, migration, detention, and the traumas attendant to these experiences, give us the moral authority, and with it the responsibility, to speak out on this as experts by experience.

Many members of the Jewish community in the UK have parents or grandparents who came to this country as refugees. Of the Jewish refugees arriving before the Second World War to escape Nazi persecution, close to 20,000 were interned as ‘enemy aliens’ on the Isle of Man.

Asylum seekers being detained and deported thus has huge resonance for the Jewish community. Creating a framework that sees those seeking protection in the UK as criminals and unworthy of human rights is very dangerous and contrary to human rights values. We do not support a Bill of Rights, which increases the ease of detention and deportation of asylum seekers. We stand with all those seeking protection from persecution.

In parallel with this, the proposal to reduce or remove damages on account of a person’s conduct is of concern. This is very likely to have unintended consequences. In our work campaigning against modern slavery, we are aware that victims of trafficking are often convicted of immigration offences. This is despite their circumstances and within a system which may not recognise how trauma impacts on how victims verbalise their experience. Yet such convictions would count against them receiving damages for human rights abuses.

– *‘The stranger who resides with you shall be to you as one of your citizens; you shall love him as yourself, for you were strangers in the land of Egypt: I the LORD am your God’ (Leviticus 19:34)*

3. Jewish Values

Human rights are a reflection of Jewish values.

Jewish values are gained from Jewish religious texts and their commentary and are founded on the principles of equality, fairness, respect, responsibility (*tikkun olam*), community, and family life. These are the same core values that underpin human rights; you cannot have human rights without these values.

Whilst neither Judaism nor Jews have exclusivity over human rights or the values they reflect, there is a strong resonance between Jewish values and human rights.

"Accordingly, man was created as an individual, to teach us that whoever destroys a single soul, is as if he destroyed an entire world; and to ensure peace among men, so that no person can say to another, '[My] father is greater than your father!'..." (Talmud Sanhedrin 38a)

Framing

The framing of this consultation goes against Jewish values. It fails to develop a human rights culture. It fails to consider the impact on ordinary people.

We strongly disagree with the emphasis on the 'undeserving', namely, asylum seekers, foreigners, and criminals. Setting up two categories of people, those who deserve rights and those who do not, goes against the principle that human rights are universal, equality based and absolute. There is no person who is undeserving of human rights by virtue of their humanity.

We are concerned that examples in the consultation document have been worded in ways which obscure the true findings of the legal cases discussed. For example, the discussion of Ziegler at [135] implies equivalence between the human right to protest and the right 'to pass along the highway'. Only one of these is a fundamental right. Some of the examples used in the proposals do not qualify as 'valid' human rights arguments and therefore undermine the fundamental protections the Human Rights Act is designed to provide.

René Cassin campaigns on the rights of people who are experiencing human rights abuses similar to those Jewish people have suffered in the past. These include Gypsy, Roma and Traveller people, victims of modern slavery, asylum seekers in detention and those suffering from prejudice, discrimination and hate crime. We fear the reduction in human rights protection for some minorities will have a detrimental effect on all vulnerable groups.

History tells us of the danger of targeting minorities with a reduction in rights. Their rights do not deserve restricting. And we also know from experience where such targeting can lead.

"...and to praise the greatness of the Holy One blessed be He, for when a man mints a number of coins from the same material, they are all identical to one another, whereas the King of Kings, the Holy One blessed be he, created all men in the image of the first man and yet not one of them is identical to another. Therefore, each and every one must say 'the world was created for me.'" (Talmud Sanhedrin 38a ctd)

a. Women's rights

Women's rights are integrated across all of our campaigns at René Cassin. We utilise an intersectional framework, recognising that the experience of multiple oppressions puts some women at higher risk of oppression.

We welcome the importance the Justice Minister expresses regarding women's rights and particularly on protecting women from domestic violence.

Jewish women experience domestic abuse in the same way as other women. However, [Jewish Women's Aid](#) notes that it takes Jewish women 11.5 years on average before they reach out for help. This is about two years above the national average.

Judaism's emphasis on family life and family values can make it difficult for women to talk about what has happened to them and to ask for help. Jewish law expressly forbids personal violence and requires commitment to *shlom bayit*, a happy and peaceful family life. Jewish men who commit domestic abuse, are destroying *shlom bayit* and breaking Jewish law.

It can be very difficult for a Jewish woman or child experiencing domestic abuse to tell someone within their community what is happening. For many, it is equally impossible to seek help from outside, for fear of bringing shame to their community, or their religion into disrepute, or for fear of inviting anti-Semitism.

These examples from [BIHR's case list](#) demonstrate how the Human Rights Act can protect women fleeing domestic violence.

- *Debartri had to keep moving with her children to avoid her violent husband. When social workers told her they would place her children in foster care as she was an unfit mother and intentionally homeless, she argued this decision failed to respect her right to family life and they agreed the family would remain together. Social services helped cover the costs of accommodation.*
- *Ruth told the council it would be a breach of her human rights if she had to return to her abusive partner. They allocated her a council house.*

Such evidence shows that the Human Rights Act is currently providing protection in the wake of domestic violence. In numerous cases women have pointed out local authorities' obligations to protect them from harm, enabling them to get housing and safety. Frequently this does not require going to court.

Were the consultation proposals to come into effect, women escaping domestic violence would find it harder to access their human rights. Firstly, the reduction in positive obligations on public authorities would reduce the police's obligation to protect them. The addition of a permissions stage before taking a case will make it harder for women to do so. Finally, in the case of domestic homicide, the proposals would reduce the bereaved family's ability to access legal aid to find out the truth at the inquest.

We are very concerned, therefore, that the proposals will have the opposite effect to those the Justice Minister is suggesting in terms of women's rights. The proposals are also not consistent with the Home Secretary's announcement on 2nd March 2022 that violence against women and girls will be added to the [strategic policing requirement](#).

We object to the government using a narrative of protecting women to support a new Bill of Rights when it will actually have the opposite effect.

b. Family life

Whilst the government and the media have been focusing on unpopular beneficiaries of the Human Rights Act, René Cassin has focused on the importance of how the Human Rights Act benefits 'ordinary people in their everyday lives'. This aspect has been missed from the mainstream narrative and we have worked to reach the Jewish community and bring such everyday stories to life. Many focus on the right to family life.

Our film [*Sunrise, not Sunset*](#) demonstrates this. It tells the story of an elderly Jewish couple who are heartbroken when the council allocates them to separate care homes until their daughter realises they could use the Human Rights Act as the means to bring them back together. The film is inspired by the true story of Mr and Mrs Driscoll.

When their local council allocated Mr Driscoll but not Mrs Driscoll to a care home, they argued their right to family life meant they should stay together. After they held a demonstration and involved the local newspaper, Social Services changed their minds and placed them in the same home.

The Human Rights Act ensures families can stay together in a range of circumstances. Examples, also relevant to the Jewish community, of using the Human Rights Act in relation to family life are getting disabled people's housing adapted, access to transport for students with special needs and same-sex marriage, to name a few.

The government's support for family values is not reflected in these proposals. Indeed, the proposals fail to recognise the positive impact the Human Rights Act has had on family life. The proposals reduce rights protection through, for example, reducing positive obligations on public authorities to protect people and introducing a permissions stage before taking a case. Because of this, if these proposals were to be implemented, children, elderly people, disabled people, people with mental health problems and others would all have reduced access to human rights.

The UK has just experienced the biggest pandemic for a century. The proposed reduction in positive obligations on public authorities would reduce the requirements to support people affected by Covid-19 in terms of health and welfare. As we recover from the pandemic, the Human Rights Act will be a critical tool for human rights assessments of measures for Covid-19. Such recourse needs to be available to everyone. The proposal of a permissions stage will make this harder.

Conclusion

We welcome the UK remaining a party to the European Convention on Human Rights.

However, the government's proposal for a new Bill of Rights reduces some rights and makes those remaining harder to access. It creates a hierarchy in the entitlement of rights. We are very concerned at this attempt to move power from the people to the executive. Human rights are essential to protect minorities. Losing protection for minorities leads to a loss of protection for all.

The proposal to reduce access to human rights legislation will have worrying implications for all the people mentioned above who could use the Human Rights Act. These include people of faith, victims of domestic violence, people in care homes, disabled people, and children.

We already have a Bill of Rights called the Human Rights Act. We believe that the government's focus should be to educate, implement and enforce our Human Rights Act more effectively.

Based on Jewish religion, Jewish history and Jewish values, René Cassin's conclusion is that there is no need to replace the Human Rights Act with a Bill of Rights.

The signatories below support René Cassin's submission on the Human Rights Act Review

Rabbis

1. Rabbi Warren Elf MBE, Southend and District Reform Synagogue, Liverpool Reform Synagogue
2. Rabbi Lea Mühlstein, Senior Rabbi, The Ark Synagogue, London
3. Rabbi Aaron Goldstein, Senior Rabbi The Ark Synagogue, London
4. Rabbi Charley Baginsky, CEO, Liberal Judaism
5. Rabbi Elli Tikvah Sarah, Rabbi Emeritus, Brighton and Hove Progressive Synagogue
6. Rabbi Adam Zagoria-Moffet, Rabbi, St. Albans Masorti Synagogue
7. Rabbi Dr Rene Pfertzel, Kingston Liberal Synagogue, Co-chair of the Conference of Liberal Rabbis and Cantors
8. Rabbi Dr Deborah Kahn-Harris, Principal, Leo Baeck College
9. Rabbi David Mason, Muswell Hill United Synagogue
10. Rabbi Helen Freeman co- senior rabbi, West London Synagogue
11. Rabbi Jonathan Wittenberg, Senior Rabbi, New North London Synagogue
12. Rabbi Robyn Ashworth-Steen, Principal Rabbi, Manchester Reform Synagogue

Communal organisations and Individuals

1. Professor Francesca Klug OBE
2. Martha Spurrier, Director, Liberty
3. Katie Clarke, Director, Bringing Us Together
4. Samuel Danker, Movement Worker, Noam Masorti Youth
5. Isabel Bard, Movement Worker, Noam Masorti Youth
6. Lucy Cohen, Director, Noam Masorti Youth
7. Dr Edie Friedman, Executive Director, The Jewish Council for Racial Equality (JCORE)
8. Katie Felstein, Habonim Dror
9. Joe Shotton, Movement Worker, LJY-Netzer
10. Nina Freedman, President, Union of Jewish Students
11. Laurie Rackind, Chief Executive, JAMI
12. Ali Harris & Clare Moody, Co-Chief Executives, Equally Ours
13. Dr Harriet Samuels, Reader in Law, Westminster Law School, University of Westminster
14. Lauren Chaplin, Solicitor, Leigh Day
15. Sara Nathan OBE
16. Daniel Carmel-Brown, CEO, Jewish Care
17. Hannah Weisfeld, Executive Director, Yachad
18. Joshua Alston, Chair, Jewish Greens
19. Sam Alston, secretary, Jewish Greens
20. Elise Benjamin, External Communications Officer, Jewish Greens, former Lord Mayor of Oxford
21. Vivien Lichtenstein, Membership Officer, Jewish Greens
22. Zack Polanski, Treasurer, Jewish Greens and member of the London Assembly

23. David Zell, Non-portfolio Officer, Jewish Greens and Green Party candidate for Islington Borough Council
24. Daniel Silverstone, Chair, René Cassin
25. Rachel Zaltzman, Trustee, René Cassin
26. Jonathan Metzger, Barrister and Trustee, René Cassin
27. Abigail Morris, Trustee, René Cassin
28. Lauren Keiles, Trustee, René Cassin
29. Jeff Highfield, Trustee, René Cassin