

# Human Rights Act Reform: A Modern Bill of Rights

## René Cassin Briefing

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## Introduction

This briefing is in response to the publication of the Bill of Rights on 22<sup>nd</sup> June 2022. It develops René Cassin's [submission](#) to the government's consultation on replacing the Human Rights Act with a proposed Bill of Rights.

René Cassin's concerns about the Bill of Rights reflect our Jewish beliefs, values and history.

In terms of human rights violations, the Holocaust was a defining event of the past century. It resulted in the most atrocious human rights abuses and in the development of international laws to prevent this happening again. The first of these, the Universal Declaration of Human Rights, was co-drafted by our namesake, Monsieur René Cassin, in 1948. Shortly after, British lawyers and politicians were very involved in drafting the European Convention on Human Rights (ECHR) and in 1951 Britain was the first state to sign it. The Human Rights Act 1998 brought the ECHR into domestic use in 2000. These events and contributions by Cassin and other individuals have created an important legacy.

René Cassin's position as representing a community of 'speakers by experience' and of champions of this legacy informs our response to the Bill of Rights. Below we focus on three issues: marginalisation, freedom of religion and on the principle of a living instrument.

We echo the calls of experts in the protection of [women's rights](#), [disabled people's rights](#) and [religious freedoms](#).

Ultimately, our analysis concludes that the Bill reduces rights instead of enhancing them. It weakens the ability of ordinary people to challenge decisions made by public authorities. It undermines a legacy that needs to be upheld.

Our recommendation is that the Human Rights Act should be maintained and the Bill of Rights removed from parliamentary business.

### 1. Marginalisation

The lead up to the Holocaust saw the marginalisation of several groups for their identity or their political views. Jews, Roma, disabled people, gay people and communists were marginalised from 1933 onwards in Nazi Germany. This took the form of persecution, medical experimentation, denial of rights, identifying measures such as yellow stars for Jews, denial of education and employment, internal displacement and finally deportation to and murder in concentration camps. Millions died.

This experience of marginalisation is still within living memory and embedded in the consciousness of the Jewish community as a whole. It is because of this that the Jewish community stands and empathises with other minorities, especially when their rights are threatened.

A clear strand throughout the Bill is the division of people into those who are 'deserving' and those who are 'undeserving' of rights. For example, rights are more limited for offenders, foreign national prisoners and those seeking asylum or who have been trafficked. As such, the Bill means that deportation is only incompatible with article 8 (freedom of private and family life) if the deportation would cause exceptional and overwhelming harm. This puts the bar for article 8 much higher for foreign nationals than for British people.

It is of particular concern that those marginalised in this way are also those who are seen as unpopular (in society) and those who are more likely to suffer from human rights abuses.

The Jewish community has had centuries of experience of such marginalisation. This experience lends to what we believe is both a moral authority and moral responsibility to speak on these issues and to stand in solidarity with all marginalised groups. It is invidious to bring in a law, calling itself a Bill of Rights, which will discriminate against such groups.

René Cassin works closely with asylum seekers, survivors of trafficking and people in immigration detention. All of these people, our partners, will be adversely affected if this Bill becomes law.

Our Jewish religion and values, as well as our history, tell us that human rights are universal and no one should be excluded from them.

## **2. Freedom of religion**

The lead up to the Holocaust involved the curtailing of the right to religious belief and practice. Jews were persecuted specifically because they were Jewish. On Kristallnacht (9<sup>th</sup> November 1938) synagogues were burned. From then on Jews were rounded up and deported to labour or death camps. From 1938 to 1945 six million Jews were murdered by the Nazi regime. This was clearly an attack on Jewish people because of their religion.

Article 9 of the Human Rights Act protects the right to freedom of thought, conscience and religion. The Jewish community has full enjoyment of article 9 in the UK. This is why it is worth preserving.

There are a few cases where article 9 has been shown to allow people to follow their religion without interference. Such cases have implications beyond the specific complainants, for members of other religious communities and those with no religious belief.

As the Bill of Rights reduces access to rights, it provides less protection to freedom of religion than the Human Rights Act does.

### *Cases*

#### Burials

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

When the senior coroner of North London put in place a policy that failed to allow Jewish or Muslim burials to be expedited despite their religious requirements, the Adath Yisroel Burial Society and Mrs Ita Cymerman Symons MBE took a judicial review.

The court found the policy unlawful on a number of grounds, including failure to strike a fair balance between the rights and interests of different groups under Article 9 ECHR.

As a result, the Chief Coroner had to produce new guidance to clarify this matter. This change benefits two religious communities, the Jewish and Muslim communities.

#### Religious symbols

[Eweida v UK, 2013](#) (taken from [BIHR's website](#))

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.

#### Jewish care home

Mr N, age 91, grew up in an Orthodox Jewish environment and has chosen to be part of a Jewish community all his life. He was living in Jewish supported living apartments but after a fast discharge from hospital his local authority placed him in a secular care home, ignoring his cultural needs. Using the Human Rights Act, Jewish Care social workers are advocating for Mr N to relocate to a culturally appropriate care environment, i.e. a Jewish home.

#### Get abuse

In orthodox Jewish families, a religious divorce involves the husband providing a *get* (Jewish divorce bill) to his wife. In some cases, a husband refuses to give a *get* to his wife. This is often, but not always, to exert leverage in relation to other aspects of the divorce (such as the financial settlement). A woman denied a *get* will be severely restricted in her personal and social life as it means she cannot remarry in an orthodox synagogue and cannot have legitimate children from any subsequent marriage who are known as *mamzerim*.

*Get* abuse/refusal is recognised in law as a manifestation of coercive and controlling behaviour and seen as a breach of a wife's right to freedoms of religion and expression and to marry. With the Bill of Rights, which repeals and replaces the Human Rights Act 1988 and explicitly states at paragraph 1 (2) (b) that courts are no longer required to read and give effect to legislation as far as possible that is compatible with Convention rights (specifically section 3 of the HRA 1988), women will be substantially disadvantaged in domestic violence and *get* abuse cases as they will no longer have recourse to Articles 9, 11 and 12 of the Convention for this abuse, none of which have been excepted under the Bill of Rights.

### 3. Living instrument

As stated previously, a number of human rights treaties were written as a response to the Holocaust, including the ECHR, so that never again would states persecute their citizens including Jews, Gypsies, Roma and Travellers, gay people and disabled people.

One of the principles of the ECHR, and thus the Human Rights Act, is that it is a living instrument. This means it reflects the social attitudes of society at the time a case is considered. The Bill of Rights removes this principle. It is of great concern that human rights protections will no longer develop in line with changing social, political and cultural norms and with developments in science and technology. If this had been the case when the HRA came into force, the rights of women, disabled people, gay people and others who have all gained from judgements under the HRA would have been limited. This removal of the living instrument principle will result in cases in the UK diverging from the

jurisprudence of the European Court of Human Rights and result in more cases against the UK being heard and won in Europe.

#### **4. Cases involving Jewish people**

Breaches of the Human Rights Act can specifically affect Jewish people in the same way they affect wider society.

Positive obligations require the state to take action, generally to protect citizens against threats to their fundamental human rights. This means all public bodies - e.g., local authorities, the police, the courts have a duty to protect people from serious harm and from known and credible risk. Thus, positive obligations provide a proactive way to implement the Human Rights Act. The case of the Jewish care home above is an example of this; the local authority was reminded by [Jewish Care](#) social workers that it had a positive obligation to uphold Mr N's human rights.

The Bill of Rights will prohibit courts from interpreting the Human Rights Act as imposing positive obligations. Removing this mechanism for people to obtain their rights makes it impossible to guarantee their human rights. It becomes a postcode lottery depending on public authorities' priorities and resources. People will no longer be able to rely on the HRA for their protection. Having a Bill of Rights, which fails to provide for people's human rights in real and practical terms does not protect those rights at all.

The Human Rights Act benefits Jewish people just like the rest of society. It benefits ordinary people in their everyday lives, such as elderly people, those with mental health issues or special needs and survivors of domestic violence. This is far from the narrative promoted by the media and parliament that the Human Rights Act only favours unpopular people like foreign national prisoners or asylum seekers. We provide some examples below.

##### *Cases*

##### *Jewish care home couple*

The organisation, Jewish Care has recently supported a couple, Mr and Mrs R, who are in their 80s in their right to family life. Mr and Mrs R have been married for 54 years and wanted to stay together at this stage of their lives. Their local authority assessed them both separately and wanted Mrs R to move into a Jewish Care home without Mr R, as they felt that the care needs of both partners weren't sufficient to warrant them both moving to a care home. Jewish Care advocated for them to be together and asked for a reassessment, based on their care needs and their right to family life. Jewish Care were successful and it was found that both of their care needs met the criteria for more support. They are now living in a Jewish Care care home.

##### *Domestic abuse*

[Evidence](#) from Jewish Women's Aid shows that it takes Jewish women on average 11.5 years before reaching out for help - this is around two years higher than the national average. The reduction in the ability of victims of domestic abuse to challenge decisions made by public authorities, for example to ensure reports of rape and sexual violence are properly investigated and prosecutions pursued, will have a disproportionate effect on Jewish women, therefore.

More generally the Bill of Rights reduces the rights of women facing violence against women. By removing positive obligations on public authorities to protect women in danger or ensure their safety, there is no longer a duty on the police or housing services to protect such women from the perpetrator or from a breach to their family life. As the [End Violence Against Women Coalition](#) states, “The Human Rights Act plays a crucial part in enabling women’s organisations to hold institutions and authorities to account in their treatment of victims and survivors seeking support.”

### **Recommendation**

In conclusion, we are recommending voting against the Bill of Rights.

Firstly, the Bill of Rights actually reduces people’s rights. In particular, it reduces the rights of those who need them most. It results in marginalisation, threatens the right to freedom of religion, and prevents human rights law keeping up to date with current social mores. All these aspects have a resonance for the Jewish community, particularly through the lived experience and history of past persecution and genocide.

Secondly, we already have a Bill of Rights – it is called the Human Rights Act!