Will the Human Rights Act (HRA) 1998 withstand the Tumultuousness of the Twenty-First Century?

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Abstract

Picture a sturdy ship at sea – peacefully gliding across calm and serene waters, with its passengers joyfully enjoying their ride. With each passing minute, the sky visibly darkens. Torrential rain morphs the once gentle waters into violent waves that crash against the struggling vessel. Only time will tell the uncertain outcome of the poor ship.

This analogy encapsulates the twenty-first century plight of the *Human Rights Act 1998 (HRA 1998)*, which gives effect to the *European Convention of Human Rights (ECHR).* While the sturdy ship represents the *HRA 1998*, its passengers symbolise the citizens of the UK. At the same time, the violent waves signify the mounting pressures for the *HRA 1998* to be revoked. In the unlikely (yet possible) event the ship capsizes, its passengers would either be left stranded or forced to board another, less sturdy and more controversial ship, named the *Bill of Rights Bill*.[1]

This Article seeks to (i) discuss the possibility of the *HRA 1998* withstanding the tumultuous "waves" of the twenty-first century, (ii) the likelihood of the *Bill of Rights Bill 2022* coming to life at long last, and how this would adversely impact the average UK citizen.

Tempestuous Waves in the Dark Waters

For some twenty-eight years, the *HRA 1998* has been in effect – making it a relatively young, but invaluable statute, nevertheless. Despite its youthful vigour, the *HRA 1998* is no stranger to disparagement. In 2006, just seven short years after its enactment, criticisms surrounding the Act began to emerge.

The Leader of the Conservative Party (as he then was), David Cameron, stated that it was finally time to "…strike a common-sense balance between civil liberties and the protection of public security".[2] This was an incredibly bold proclamation, considering how such a radical

[1] Bill of Rights Bill, HC Bill 117 (2022-3).
[2] David Cameron, Balancing freedom and security – A modern British Bill of Rights, 26 June 2006.

idea had not been introduced prior. In 2014, Cameron reiterated the possibility of enacting a *British Bill of Rights* at the Conservative Party Conference, depicting his sheer persistence in enacting this Bill.[3] While he acknowledged that the *ECHR* provided a basic framework of rights for UK citizens, Cameron claimed it had been interpreted in an inappropriately wide manner over the years. This prevented the UK from "deporting suspected terrorists", hence infringing the nation's public security. At this juncture, it is crucial to note that it was the Labour Party who enacted the *HRA 1998*, with the intention of "bringing rights home".[4] To the Conservative Party, the *HRA 1998* posed a significant hurdle in fully realising the aims of their manifesto, which only encouraged them to try to capsize the sturdy vessel (the *HRA 1998*) in any way they could. This is evident from Cameron's speech, where he stated "…and as for *Labour's* Human Rights Act? We will scrap it, once and for all".[5] A year later, the Conservative Party released the 'Conservative Party Manifesto 2015', where it promised that 'The next Conservative Government will scrap the *Human Rights Act 1998* and introduce a British Bill of Rights*'*.[6] Most fortunately, this clearly was not the case, considering that a decade later, a British Bill of Rights is nowhere near in sight.

In 2021, when a global pandemic had the world floundering, the government established the Independent Human Rights Act Review (IHRAR), with the intention of examining the effectiveness of the HRA 1998. The IHRAR had two key objectives, namely (i) to examine the relationship between UK courts and the ECtHR and (ii) to analyse the impact of the *HRA* on the relationship between the three components of the State.[7] Ultimately, although the IHRAR proposed some amendments to the *HRA*, it emphasised UK's commitment in remaining a party to the *ECHR*. Despite the IHRAR's overall support for the *HRA* and *ECHR*, Dominic Raab, (as he then was) the Foreign Secretary and First Secretary of State, nevertheless proposed the *Bill of Rights Bill 2022* under the Boris Johnson government. When Liz Truss replaced Boris Johnson as Prime Minister, the *Bill of Rights Bill 2022* was quickly shelved, and in doing so, she put an end to Raab's efforts in repealing the *HRA 1998*. However, Truss' government was incredibly short-lived. In the fall of 2022, the Conservative Party returned to power – this time

[3] Alexander Horne Joanna Dawson, Vaughne Miller, Jack Simson Caird, 'A British Bill of Rights?' (2015) Number 7193 <https://researchbriefings.files.parliament.uk/documents/CBP-7193/CBP-7193.pdf> accessed 07 October 2025.
[4] Merris Amos, 'Problems with the Human Rights Act 1998 and How to Remedy Them: Is a Bill of Rights the Answer?' (2009) <72(6) MLR 883-908 https://plus.lexis.com/api/permalink/162ec159-c5f2-4596-b27b-69ecdbb4087c/?context=1001073> accessed 20 October 2025.
[5] Ibid.
[6] This was a 2015 Conservative Party manifesto commitment.
[7] Ministry of Justice, 'The Independent Human Rights Act Review' (2021).

under the Rishi Sunak government. With the comeback of the Conservative Party, came the reinstatement of Raab as the Ministry of Justice. Quite optimistically, Raab viewed this as an opportunity to re-introduce his Bill, but Justice Secretary Alex Chalk halted any hopes of Raab in repealing the 1998 framework when he confirmed the government would not pursue the Bill any further.

Seemingly, the nail has been hammered into any attempt of introducing a Bill of Rights Bill. With the Labour government currently in power, under the Starmer government, the chances of the party introducing a Bill to replace the *HRA 1998* are low. This is in consideration of the fact that the Labour Party introduced the Act in the first place. Therefore, any indication of the Labour Party revoking their "brainchild" would, no doubt, attract quips and mockery from the Conservative Party.[8] With that, it seems the boat is in safe waters for now, but the same certainly cannot be said should the Conservative Party come back into power.

A New Ship Set to Sail: The Bill of Rights Bill 2022

Upon examination of the Bill, Lord Pannick humorously proclaimed that "If this Bill were being sold in the shops, the Lord Chancellor, in my view, would be at risk of prosecution for false or deceptive advertising".[9] In 2022, it was Dominic Raab's mission to introduce a Bill with the express aim of replacing the HRA 1998 as good law.[10] The Bill would continue to give effect to the *ECHR*, as its predecessor did and, according to Raab himself, the provisions of the Bill were "compatible with the Convention rights".[11] If this were truly the case, why was the Bill so controversial and whatever was the reason behind Lord Pannick's statement?

Despite acting as a replacement to the *HRA 1998*, the *Bill of Rights Bill 2022* was surely nothing like it. Most astonishingly, *S.1(2)(b)* of the Bill proposed to remove entirely the current *S.3* Interpretative duties conferred onto judges to interpret legislation to give effect to Convention rights "so far as it is possible to do so". [12]

[8] Such as when Kemi Badenoch criticised Prime Minister Sir Keir Starmer for failing to take a firm stand on the legal definition of a woman.
[9] Lord Pannick KC, Oral evidence: Parliament and human rights, HC 550, Joint Committee on Human Rights, 6 July 2022 <https://committees.parliament.uk/oralevidence/10561/pdf/> accessed 01 October 2025.
[10] Bill of Rights Bill, s1(1).
[11] Bill of Rights Bill, Explanatory Notes.
[12] Human Rights Act 1998, s3.

In accordance with *S.1(2)(b)* of the *Bill of Rights Bill 2022*:[13]

> *(1) (2) In particular, this Act clarifies and re-balances the relationship between courts in the United Kingdom, the European Court of Human Rights and Parliament by ensuring –*
>
> > *(b) that courts are no longer required to read and give effect to legislation, so far as possible, in a way which is compatible with the Convention rights and Convention rights (see paragraph 2 of Schedule 5, which repeals section 3 of the Human Rights Act 1998);*

Despite the Bill's suggestions in removing the interpretative powers currently conferred onto judges (via *S.3 ECHR*), it maintained the ability of a judge to issue a Declaration of Incompatibility in the event that a primary legislation was in contravention of Convention rights.[14] This is certainly odd, considering how *S.3* and *S.4 HRA 1998* are typically considered complementary sections, with Declarations of Incompatibility only being issued as a last resort,[15] in the event a judge is unable to interpret primary legislation in line with Convention rights "as far as it is possible to do so". By proposing to abolish S.3, Raab risks an over-reliance on *S.4*. Therefore, this Article strongly views the suggested abolishment of *S.3* as incorrect, insensitive and in contravention of fundamental pillars of the UK Constitution – that being, the Rule of Law, Parliamentary Sovereignty and Separation of Powers.

The Rule of Law, a doctrine introduced by A.V. Dicey[16] and further expounded by Lord Bingham,[17] is central to the framework of the UK Constitution. The *Bill of Rights Bill 2022* was in clear contravention to the Rule of Law. Perhaps most significantly, *S.15* of the Bill required an individual to obtain permission from the court to bring proceedings "in relation to an act of a public authority".[18] By introducing this pre-condition, parties must satisfy an additional hurdle before being able to initiate proceedings on human-rights related matters. This risks a higher chance of delay and expenses being incurred, thus restricting the affected party's right to access to justice and clearly breaching Bingham's first and sixth sub-rule. If parties are deterred by this pre-condition, it would also hinder them from seeking protection of their fundamental human rights, thus contravening Bingham's fifth sub-rule. For these

[13] Bill of Rights Bill, s1(2).
[14] Bill of Rights Bill, s10.
[15] R v A (No 2) [2001] 2 WLR 1546, [44] (Lord Steyn).
[16] A. V. Dicey, Lectures Introductory to the Study of the Law of the Constitution (London: Macmillan and Co, 1885).
[17] T. Bingham, The Rule of Law (London: Allen Lane, 2010).
[18] Bill of Rights Bill, s15.

abovementioned reasons, it cannot genuinely be said that Raab, in proposing this Bill, exercised his powers in a reasonable manner.

Similar to how *S.3* & *S.4 HRA 1998* go hand-in-hand, the doctrines of Parliamentary Sovereignty and Separation of Powers complement each other throughout the subsequent analysis.[19] To put it plainly, *S.3 HRA 1998* upholds the doctrine of Separation of Powers as it merely confers 'interpretive' powers onto the judiciary. As recognised by Elliot & Thomas, the judiciary are prevented from adopting a legislative role, thus respecting the supremacy of Parliament.[20] Although it is acknowledged that the judiciary on occasion strain the meaning of primary legislation to be in line with the *ECHR*, this is only evinced through a handful of well-intentioned decisions. In particular, the majority in *Ghaidan v Godin-Mendoza* interpreted the *Rent Act 1977* to confer statutory protection onto surviving partners of same-sex relationships.[21] Yet Lord Nicholls did not view the judiciary's *S.3* powers to be unlimited and that Parliament could not have possibly intended for the courts to adopt an interpretation inconsistent with the 'fundamental feature of the legislation'.[22] Lord Millett also concluded that the use of gender-specific language throughout the *Rent Act 1977* clearly prevented any interpretation that it should apply to homosexual relationships.[23]

While the concern of judges acting 'outside their power' is justified and valid, would the outcome in *Ghaidan* truly have been desirable if the courts refrained from straining the meaning of the *1977 Act*? Arguably, the judiciary in *Ghaidan* had a justified reason for interpreting the *1977 Act* the way they did. Their efforts in bringing the legislation in line with the changing, progressive views of twenty-first century England is surely laudable. That being said, this Article certainly does not condone the judiciary adopting such a bold approach in every circumstance, especially if they risk encroaching into the jurisdiction of the legislature component. Fortunately, this mindset seems to be generally reflective of the approach adopted by the courts when they are truly unable to interpret legislation to be in accordance with the *ECHR*. As a prime example, in *Bellinger v Bellinger (2003*), Lord Nicholls held that *S.3 HRA 1998* did not permit the courts to interpret Mrs Bellinger as a "female".[24] Therefore, they had no choice but to issue a Declaration of Incompatibility as a signal to Parliament that *S.11(c)* of

[19] Human Rights Act 1998, ss3 and 4.
[20] Mark Elliot and Robert Thomas, Public Law (4th edn, OUP 2020) ch 19.
[21] Ghaidan v Godin-Mendoza [2004] 3 WLR 113.
[22] Ibid [68] (Lord Nicholls).
[23] Ibid [80], [99] (Lord Millet).
[24] Bellinger v Bellinger (Lord Chancellor Intervening) [2003] UKHL 21.

the *Matrimonial Causes Act 1971* contravened the *ECHR*. It is clear from the brief discussion of the merits of *S.3* that Raab lacked justified grounds when suggesting the *Bill of Rights Bill*, and more specifically *S.1(2)(b)*.[25]

Yet another concerning section of the Bill was *S.1(2)(a),* which provides:

> *(a) That it is the Supreme Court (and not the European Court of Human Rights) that determines the meaning and effect of Convention rights for the purposes of domestic law (see section 3(1));*

While *S.2 HRA 1998*[26] currently requires all courts in the UK to 'take into account' any judgement of the ECtHR, *S.1(2)(a)* would drastically reduce the need to. Surely this would be undesirable to affected individuals who bring their cases to court whilst relying on past decisions of the ECtHR, only to be informed that the Supreme Court is the most authoritative body when determining the meaning of Convention rights. Therefore, to obtain a decision that is fair and in consideration of past ECtHR case law, the only choice would be to bring one's case to Strasbourg, thus increasing time and expenses once more.

Is the HRA 1998 Broken Beyond Repair?

Contrary to the opinions of Raab and the majority of the Conservative Party, this Article stands in firm belief that the *HRA 1998* is not in dire need of reform anytime soon. While this Article admits that there are "cracks" in the *HRA* that could be amended, such as restricting the *S.3* interpretive powers, this does not mean that the Act is beyond repair. Moreover, it is certainly not an excuse for Raab to propose abolishment of the *HRA 1998* and replace it with a newer and less desirable mode of delivering justice to UK citizens. Unfortunately, with the amount of disparagement the Act is facing, it would not be a surprise if the *HRA 1998* were to be repealed in the future. In 2013, Grayling noted that some politicians have argued that the judiciary have gone beyond the scope of their powers in interpreting Convention rights, thus providing them with an undesirable level of autonomy in decision-making.[27] More recently in 2025, Kemi Badenoch voiced her opinions in exiting from the *ECHR* altogether – an action even more

[25] Bill of Rights Bill, s1(2)(b).
[26] Human Rights Act 1998, s2.
[27] Chris Grayling, European court ruling: authors of Human Rights treaty would be "turning in their graves" (2013).

controversial and radical than replacing the *HRA* with a modern Bill of Rights.[28] Shortly before she became the Prime Minister, Theresa May adopted a similar stance, advocating for a withdrawal from the *ECHR*. Should the UK leave the *ECHR*, the *HRA* would be revoked and legislators would have a 'blank canvas' to decide on the protection of fundamental rights of its citizens.[29] Although interesting to ponder upon, this Article submits that this is all it should be – a mere thought, and nothing more.

The Future of the HRA 1998

While this Article has come to an end, the waves rocking the faltering ship, that is the *HRA 1998*, certainly have not. In the midst of all the uncertainty, one thing remains certain – for as long as the Labour Party keeps the Conservative Party at bay, a Bill of Rights Bill is unlikely to replace the *HRA 1998* as new law. Only time will tell, so all one can do for now is contemplate. On that final note, this Article urges the reader to consider whether the *HRA 1998* is likely to maintain its momentum or tragically capsize in the unforgiving sea of the twenty-first century.

[28] For an interesting discussion on the possibility of the UK leaving the human rights treaty, see <bbc.com/news/articles/c981lr84013o> accessed 01 November 2025.
[29] n (20).

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