



## HUMAN RIGHTS

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*I R (Carson and Reynolds) v Secretary of State for Work and Pensions* [2005] UKHL 37, para 49.

2 F. Klug and H. Wildbore, 'Equality, Dignity and Discrimination under Human Rights Law: selected cases', available at [www.lse.ac.uk/human-rights](http://www.lse.ac.uk/human-rights).

3 See F. Klug, *Values for a Godless Age: The Story of the United Kingdom's New Bill of Rights*, Penguin, 2000.

4 *R (Amin) v Secretary of State for the Home Department* [2003] UKHL 51.

# Human rights and equality

Equality means more than being treated the same as others, and the human rights vision of equality extends significantly beyond discrimination to encompass dignity, respect and fairness. **Helen Wildbore** of LSE's Centre for the Study of Human Rights explains how using human rights laws and values to tackle inequality will help to create a society where everyone has a chance to achieve their potential.

## The human rights vision of equality

Our vision of equality in this country has been guided by our anti-discrimination laws. For over thirty years we have had laws outlawing discrimination against certain groups. There is a tendency to assume that if we act in a way that does not discriminate on the grounds covered by the anti-discrimination laws (such as race or disability) when offering employment or providing a service, then equality has been achieved. But if we see equality as maximising opportunities for individuals to achieve their potential, then eradicating discrimination does not necessarily address many of the factors involved in realising this vision of equality. That is not to say that our anti-discrimination laws have been unsuccessful. They send a strong, symbolic message that discrimination is wrong and unacceptable and they have helped tackle discrimination and prejudice in this country. However, ensuring freedom from discrimination is a far from sufficient means of achieving equality.

The human rights vision of equality extends significantly beyond discrimination. It recognises that certain outcomes need to be guaranteed to allow individuals to achieve their potential. Equality under human rights law therefore encompasses dignity, respect, fairness of treatment and access to the fundamental rights which enable

participation in a democratic society.

Dignity is a foundational human rights value. This emphasis on dignity means it is not acceptable under human rights law to treat everyone equally badly. It is not sufficient to ensure no-one is discriminated against if the result is that all groups are treated with an equal lack of respect. 'In the field of human rights, discrimination is regarded as particularly objectionable because it disregards fundamental notions of human dignity and equality before the law.' The human rights vision of equality therefore demands that differences in treatment should generally be rectified by a levelling up of treatment, rather than a levelling down.

## Human rights values – a legal framework for solving disputes

The pursuit of equality has been the driving force behind most human rights instruments since the Second World War.<sup>2</sup> The Human Rights Act (HRA), which incorporates the European Convention of Human Rights (ECHR) into UK law, came into force in 2000. The HRA is a 'higher law' that works like a Bill of Rights to influence all other laws and policies.<sup>3</sup> It is based on broad values such as dignity, equality and respect. From this set of values, principles can be devised which provide a framework for solving problems. This framework can be used by the courts to solve conflicts but



it can also be used by front line workers, such as immigration officers or carers, to ensure services are delivered in a way that is fair and just and respects individuals' dignity (as the next section will demonstrate). Like our anti-discrimination laws, the HRA is a symbolic piece of legislation. Its terms are ambitious in that they aspire to a better society, yet the HRA provides a legal framework with which to pursue its goals.

In addition to giving individuals legally enforceable rights, and providing a framework for decision making, it was also intended that the HRA would influence public policy. Changes in practice and procedures have been brought about to comply with judgments or to deter possible legal challenges in future. For example, following the murder of Zahid Mubarek his family applied to the courts seeking an inquiry into his death. Zahid was killed in a Young Offenders Institution by his cellmate, whose history of racist and violent behaviour was well-known to the police authorities. The court said that where a death occurred in custody the state is under a duty under Article 2 of the ECHR (the right to life) to publicly investigate the death before an independent judicial tribunal where there is an opportunity for relatives of the deceased to participate.<sup>4</sup> Following this case the Prison Service introduced changes to its policy and procedures relating to cell-sharing risks and a public

inquiry into the murder was established.

### **Human rights as a tool for individuals at risk of discrimination**

As set out above, the principles in the HRA provide a framework for solving problems that can be used not only by the courts but by front line workers to help solve problems in different aspects of our lives. The British Institute of Human Rights (BIHR) conducts training activities in the voluntary and public sectors and encourages people to make practical use of human rights standards to achieve better service delivery. It has found that the human rights framework can be used very effectively to reach negotiated solutions to problems without the need to resort to litigation.<sup>5</sup> The following examples, taken from the BIHR's experience, illustrate how effectively human rights can be used as a tool to empower individuals at risk of discrimination to ensure they are treated with fairness, dignity and respect:

- Members of a user-led mental health befriending scheme used human rights arguments to challenge a hospital which repeatedly sectioned asylum-seekers who spoke little or no English. They used the right to liberty (under Article 5) and the asylum-seekers' rights not to be discriminated against on the basis of their language (under Article 14) to challenge the hospital's practice of sectioning people without the use of an interpreter.
  - Following a bereavement, an older person was moved from her council house to a smaller flat on the seventh floor of a building. The woman did not want to move because she had mobility problems and a severe fear of heights but the housing department decided
- the accommodation was suitable. Her advocate attended a BIHR training session and used human rights arguments to negotiate with the local authority. The housing department eventually provided alternative housing in a ground-floor property so the woman was able to go out and did not become isolated.
  - A social worker from the domestic violence team at a local authority received training on the 'positive obligations' placed on the local authority to protect the rights to life (under Article 2) and to be free from inhuman and degrading treatment (under Article 3). She went on to use human rights arguments to secure new accommodation for a woman and her family at risk of serious harm from a violent ex-partner.
  - Staff at a care home that was due to be closed attended a BIHR training session on human rights and disabled people and learnt about the human rights implications of the decision to close the home. They decided to stop their closure process, which had involved no consultation, and start again by consulting the residents. They took the residents' views into account and explicitly considered their rights to respect for private life (under Article 8), which could encompass, among other things, the friendships and social relationships that had been built up over the 5 to 10 years individuals had been living in the home.

### **Human rights fill the gaps of anti-discrimination law**

As the above examples demonstrate, human rights legalisation can play a vital role in filling some of the gaps in the anti-discrimination approach to equality.

First, the HRA casts a wider

net of protection than anti-discrimination laws which protect only certain groups of people. All of the rights and freedoms contained in the HRA must be secured without discrimination on any grounds (Article 14). Article 14 explicitly includes categories of discrimination covered by our anti-discrimination laws such as gender and race and, now, religion. But it also includes grounds not presently covered by our anti-discrimination laws such as language, political opinion, association with a national minority and a catch-all 'other status'. This wide-ranging and open-ended prohibition of discrimination means it can potentially be used in almost every type of case where individuals face 'status based' difference in treatment by public authorities.<sup>6</sup> The effect has been to create new categories of protection against discrimination, such as sexual orientation, age and disability.

Second, human rights legislation can be used to plug gaps within our anti-discrimination laws. For example, the Race Relations Act excludes 'judicial acts' from its protection. The HRA could plug this gap through guaranteeing the right to a fair trial, which, like every right contained in the Act, must be secured without discrimination. In fact the courts are explicitly required to comply with the HRA in all their decisions. Another example is caring responsibilities, which are not recognised under the Sex Discrimination Act but could be covered by the right to respect for family life in the HRA.

### **Human rights add value to tackling inequality**

The human rights approach to equality goes much further than just filling gaps in our discrimination laws. With its foundational value of dignity, it will add value to tackling equality.



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<sup>5</sup> For more information visit the BIHR website, [www.bihhr.org](http://www.bihhr.org).

<sup>6</sup> R. Clayton and H. Tomlinson, *The Law of Human Rights*, Oxford University Press, 2000.



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7 *Belgian Linguistics Case* (No 2) (1968) 1 EHRR 252.

8 *Price v UK* (2001) 34 EHRR 1 285.

9 *Artico v Italy* (1981) 3 EHRR 1 at para 33.

10 *R (Bernard) v Enfield* [2002] EWHC 2282 Admin.

11 *R (Price) v Carmarthenshire County Council* [2003] EWHC 42 (Admin).

### Respecting difference

First, the human rights approach to equality respects difference and recognises that in order to achieve equality it is sometimes necessary to treat different people differently. The ECHR does not require everyone to be treated the same in order to avoid a breach of Article 14. The European Court of Human Rights, the highest court for hearing complaints of breaches of rights under the ECHR, allows its Member States to treat groups unequally in certain circumstances in order to 'correct factual inequalities' between them.<sup>7</sup> The 'Belgian Linguistics' case concerned Belgian laws on the language used in schools. The applicants complained about the absence of French-language education in a region of Belgium considered to be Dutch-speaking but where part of the population was French-speaking. In some areas with 'special status' the language used was optional. The Court said that a difference in treatment was not per se discriminatory, provided that an objective and reasonable justification could be found. But laws which precluded certain children, solely on the basis of the residence of their parents, from having access to the French-language schools in the 'special status' areas, constituted discriminatory treatment on grounds of language.

The European Court of Human Rights has also recognised that, to secure equality, it may sometimes be necessary to treat an individual or group differently precisely because their situation is different from others.<sup>8</sup>

### Positive obligations

Second, human rights law not only protects individuals from unlawful interference with their rights by the state, it can also place a duty on states to protect individuals from unlawful interference with their rights by other individuals. Requiring states to 'secure' equal access to rights can also create a positive obligation on states to provide resources to facilitate the exercise of rights, to ensure that our rights are 'practical and effective' and not 'theoretical or illusory'.<sup>9</sup> There is little recognition of 'positive obligations' in this sense in our anti-discrimination laws, other than in the concept of 'reasonable adjustment' in disability discrimination legislation.

In some circumstances a duty to take positive action is the only way to secure an individual's physical integrity and dignity, as the following example highlights. A local authority providing housing to a disabled woman and her family had found that her accommodation was inappropriate and inadequately

adapted. The woman, who relied on a wheelchair for mobility, was in effect confined to the ground-floor lounge of the house. The local authority recognised the need to move the family to suitably adapted housing, but 20 months later the authority had still not acted to move them. The court said that the council had failed in its duty to take positive steps to enable the woman and her family to lead as normal a life as possible, and to secure her physical integrity and human dignity.<sup>10</sup> She was awarded compensation for the breach of her right to respect for private and family life and home under the ECHR.

### 'Respect' as a positive obligation

Third, 'respect' for fundamental rights does not just mean 'take into account' or 'acknowledge' the right. Respect for rights can imply a 'positive obligation' to facilitate a different way of life. For example, the right to 'respect' for private and family life (under Article 8) for Gypsies and Travellers means something more than 'taking account' of the Gypsy culture.<sup>11</sup> 'Respect' includes a positive obligation on states to act so as to facilitate the Gypsy way of life.

### Conclusion

Equality means more than being treated the same as others. It means more than comparing treatment to create a level playing field. Equality is about respecting difference, making adjustments for difference, ensuring people are treated fairly and with dignity and respect. It is about creating a culture where everyone has a chance to achieve their potential and participate in society. Using human rights law and values to tackle inequality is one route to achieving these goals. It is not the only route or a complete solution but it is a route that adds value to our anti-discrimination laws and is severely under-used at present. With the creation of a new Commission for Equality and Human Rights in 2007, it is hoped that over time the human rights vision of equality will be more widely understood and closer to being realised. □

## The Equalities Review - Consultation

The Interim Report of the Equalities Review, just published on 20 March 2006, sets out the Review Panel's findings so far and marks the start of its next phase of consultation.

The Equalities Review has been established to carry out an investigation into the causes of persistent discrimination and inequality in British society. Chaired by Trevor Phillips in a personal capacity, the Review is supported by a Panel comprising Sir Robert Kerslake, Carol Lake, Dame Judith Mayhew Jonas and Nick Pearce, and a Review Team of civil servants drawn from departments across government and based in the Cabinet Office.

The Review Panel welcomes comments and views on the Equalities Review report via the feedback form available on the website [www.theequalitiesreview.org.uk] or from The Equalities Review, Room 03.32, 22/26 Whitehall, London SW1A 2WH [tel: 020 7276 1200; email: equalitiesreview@cabinet-office.x.gsi.gov.uk].

Consultation ends on 5 June.