DOES THE HUMAN RIGHTS ACT MATTER?

Craig Mathieson's Supreme Court test case successfully challenged the rules governing disability allowances. Here he discusses the vital importance of the Human Rights Act

We are lucky to live in a country where no one believes they will have their human rights violated – or at least we used to. The Universal Declaration of Human Rights 1948, European Convention on Human Rights 1955, UN Convention on the Rights of the Child 1989, UN Convention on the Rights of Disabled Persons 1989, and the Human Rights Act 1998 guided my work as a social worker. I was educated and trained to help children and families, keeping them safe while respecting their individual dignity and self-determination, and balancing those against what was desired by the state and what may have been convenient to me or my colleagues.

I grew up believing in the inherent goodness of my country as represented by my government. I found the courts to be fair and measured, granting outcomes that mostly reflected the best interests of the most vulnerable. I saw ministers resign when caught out or in conflict with their principles, corruption punished and treason unthinkable. I believed that honest people would be treated fairly, and that the state would always play by the rules. Then I had a disabled child and woke up. You see, sick, disabled children do not vote, their families most often split up, and neither they, nor those who love them will ever be kingmakers in an election.

In 1990, the then Conservative government introduced, by secondary legislation, measures for sick, disabled children which saw Disability Living Allowance payments suspended if they had been a hospital in-patient for 84 days. The government justified the Disability Living Allowance Regulations 1990 on the basis that a child under-16 would have 'sufficient time to adjust to living in hospital' – but later admitted this was known to be false a year before the measures were brought in. For 25 years, and despite successive ministers' acknowledgement that the rule was probably wrong, the regulations were upheld by the government and their tribunals. In 2015, at the culmination of a very painful legal case that lasted four and a half years, the Supreme Court found that not only did the regulations breach my son Cameron's human rights, but that the ministers concerned had never established whether the opinions on which they based their policies had been true in the first place.

We relied upon arguments in public law (the judicial review principles of Illegality, Fairness, Rationality and Proportionality), the Human Rights Act (Article 14, Article 1 Protocol 1, and Article 8 of the European Convention), and international law (UN Conventions on the Rights of Children and the Convention on Disabled Persons). We won unanimously on every point. In reaching its judgement, the Supreme Court relied

on international conventions, letting the government know that international law is not just an opportunity for good optics, but that having taken applause for the headline you must live up to it!

None of this would have been possible without legal aid. We were represented pro bono by both our solicitor and barristers through the First Tier Tribunal, with some exceptional legal aid in the Upper Tribunal, Court of Appeal and Supreme Court. Legal representation does not come cheap, neither do the court fees at that level. The funny thing about those with the money to be able to afford such access to justice is that they are often not the ones having their rights violated.

We found our son's legal aid certificate being withdrawn unlawfully whenever we were granted a court date, and only reinstated at the last moment after the threat of judicial review, with an insincere apology along the lines of 'Well it turns out that he was entitled to legal aid after all. Sorry, old chap, hope it hasn't affected the preparation of your case at all!'

Yet, thanks to cuts brought in by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) a case such as Cameron's is unlikely to ever be heard again, because the threshold for the public interest test has been made insurmountable. In our case they argued that because we had lost in all the lower courts, we had no prospect of success at the Supreme Court – only for the Supreme Court to rule that both the Upper Tribunal and Court of Appeal should have ruled in our favour, not the government's.

In the years since, I have watched Westminster's confected circus around rights for the people they like and in the circumstances that suit them with growing anger. I also observed the former government's disdain for judicial review, human rights laws and international conventions that prevent them from mistreating other human beings with impunity, and just how vocal its ministers were about these 'issues'.

We don't need a British bill of rights, we already have one, it's called the Human Rights Act 1998. Every single review, no matter how constrained, has told ministers how good it is. The only failure associated with it is that they have sabotaged it by destroying access to justice and undermining the rule of law. The truth is that LASPO 2012 and the systematic hollowing out of legal aid and our justice system, made all that moot in the first place: There is no need to get rid of the Human Rights Act if you have already made it nearly impossible for anyone to use it.

My experience over the years has shown me that for any democracy to be worthy of the name it must adhere to certain basic principles. There must be a constitution establishing limits to government's powers and circumstances in which they are to be used. There must also be a bill of rights, like the Human Rights Act, to protect the people from their government, either in case of deliberate malfeasance, or the simple brutality of bureaucracy.

The founding fathers in America believed that checks and balances, when operated honourably, make it essential for new laws to be made by consensus, winning the arguments and persuading others to support the proposals, not by executive decree. Yet in the UK, A.V Dicey referred to the near fusion of the executive and legislative branches as the 'efficient secret of the British Constitution.'

I would argue that the situation we face today is far worse than this, because the executive dominates the legislature in parliament and no longer pays even the scantest lip service

to the conventions that honourable people used to obey. We have endured years of sanctimony about the 'sovereignty of Parliament' when those most ardent voices only seek to further strengthen their own power through patronage and corruption. To deal with this, and to stop it from happening again, we need a clear single document called the constitution. When a constitution and bill of rights that truly serve our people is at the heart of who we are and how we are governed, then so many other problems would become simpler to resolve. It not only becomes obvious that everyone in our country should have a safe, affordable home to live in, healthcare, and education, but also that we should treat others across the world with the same respect and consideration that we give and expect at home, that humans live in societies, not economies.

This constitution could make proper distinctions between how different laws can be changed, with public administration at one end and the strongest protections at the other for constitutional arrangements, currently dealt with by flimsy conventions and reliance on principle, and the Human Rights Act as the country's bill of rights.

The Human Rights Act does not just matter, it is essential. We live in a time when precisely the same type of small people that Churchill commissioned the European Convention on Human Rights to protect us from once again cast long shadows. This should tell us that we are either at the beginning of a new day, or the end of an old one. Look at the world, warnings are sounding everywhere, and we should conclude that the dawn is still a long way off.

The bones of our democracy are strong, all the proper ingredients already exist, as does the fundamental nature of our people, but they must be nurtured and protected.

***Craig Mathieson**'s son Cameron was diagnosed with cystic fibrosis and Duchenne muscular dystrophy and passed away in 2012. Craig's fight for his son's rights to the Disability Living Allowance led to his successful legal challenge to government policy using the Human Rights Act.*

This essay is part of a collection of thought pieces curated by Amnesty International UK and Labour Campaign for Human Rights. June 2024

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