

LEGAL STUDIES

How Effective are Australian Laws in protecting internationally recognized Human Rights?

Human Rights are rights that are believed to be basic to the well being of human beings. The most well-known human rights are freedom of speech, assembly, association, religion and movement. An essential element of justice is that these rights are protected as much as possible. However, these rights are not always expressed formally in the domestic law of countries. Any contrary law that seeks to overturn these basic human rights would be considered by many as unjust.

In Australian law the same human rights law is applied to everyone. This effectively means that all individuals have the right to be treated equally under the Universal Declaration of Human Rights. Many Human Rights exist in Australian Law purely because no laws have been created that interfere with them, hence the effectiveness of Australian Laws in protecting Human Rights does not have any limitations or boundaries to serve.

Since the formation of the United Nations in 1945, the notion of Human Rights has come to occupy a central place in both international and domestic law. Once Human Rights have been incorporated into domestic law in these ways then they are enforced in the same way as all other domestic law. In the international sphere, enforcement is not as simple as individuals perceive it to be. Though there are now many human rights treaties, enforcement is sporadic. Enforcement of human rights on the global stage takes the moral and political will of world leaders to give weight to human rights treaties.

In 2002, with the establishment of the International Criminal Court (ICC), there was a permanent body to prosecute gross violations of human rights when national governments fail to do so. The institution of this court has been the most momentous achievement in human rights since the establishment Universal Declaration of Human Rights. The ICC has the potential to greatly increase the effectiveness of human rights in international law.

Despite the changing perceptions of human rights, the large number of contemporary human rights struggles in the world today demonstrates the limited effectiveness of international and domestic agreements in protecting them.

The development of international rights can be traced through two distinct key areas. The first area is international customary law and the second is the most recent area in treaty law. Treaties are considered to be voluntary international agreements that coalesce signatory nations to a code of conduct. These two areas of international rights relates to human rights. The specific categories of international rights include; civil and political rights, economic, social and cultural rights, and collective right to self – determination.

Civil and political rights are also called ‘first generation’ rights. These are rights which protect the individual from the arbitrary exercise of power by the state, these rights include; the right of life, liberty and security of person, freedom from slavery, freedom from torture or cruel, inhuman or degrading treatment or punishment. Many civil and political rights are ‘negative’ rights in that the state is required to refrain from certain actions against the individual in order to protect these rights. Furthermore, Economic, social and cultural rights are also known as ‘second generation’ rights and are concerned with the material and cultural well being of people. These rights usually require government action, for ex, an adequate health system requires the government to spend money on health centres and hospitals. In addition collective rights are rights that do not belong to an individual but to a group of people, such as the continued survival of a race of people. This collective right is protected by the prohibition of genocide.

In comparison with international law, domestic law is far more effective in addressing human rights issues. The main problem with international law is the lack of enforcement. There are international courts such as the ICJ and the ICC but all nation-states, especially those that are powerful, can ignore their decisions. Unless the decisions of these courts are backed by world opinion and the political will of the world's most powerful leaders then those decisions can be ignored with impunity.

International law can be very effective but only when it receives strong backing from the majority of nation states, particularly the most powerful ones.

The effectiveness of domestic law depends on whether a country is characterized by the rule of law or by arbitrary power. A citizen in a country where there is the rule of law has many avenues through which to address any human rights violations.

Despite the fact Australia has signed all five international treaties that make up the **International Bill of Human Rights**, none of these treaties are legally binding in Australia. By ratifying the concepts outlined in the treaties and covenants, Australia would be setting clear guidelines as to the standards accepted in regards to basic human rights individuals and Australia as a nation state is entitled to.

At present the constitution covers rights that all citizens of Australia are entitled to but these are limited in scope and do not provide attention and detail to individual rights.

There are limitations on the quality of protection of the rights of individuals as can be seen by **Section 80** which guarantees a right to trial by jury but only for those being tried under Federal laws. No such guarantee applies with the states. There is a provision that trials on indictment for offences against a Federal law shall be before a jury. However, it is open for the Federal Government to say that a trial shall not be on indictment and thus avoid the requirement for a jury. There is no requirement for a jury trial in the States. Constitutional changes to put these into the constitution were rejected in 1988.

A viable response to such inconsistencies would be that of the inclusion of a Bill of Rights in Australia's constitution. At present Australia lacks a bill of Rights which means that the fundamental rights and freedoms of everyone living in Australia are not clearly presented and protected by the law. The report **Rights in Australia 1991-1992** found that **70.6% of Australians want a Bill of Rights**. The Survey also found that 85.9% supported a referendum to determine whether a Bill of Rights should be put in the Constitution.

Australia is generally well respected in the international community in regards to its human rights despite the fact it is the only western democracy without a bill of rights. It has in place mechanisms to deal with human rights issues. These include anti-discrimination legislation which in encompasses the **Racial Discrimination Act 1975, Sex Discrimination Act 1984, Disability Discrimination Act 1992, Age Discrimination Act 2004**. Furthermore Australia established the national statutory body called Human Rights and Equal Opportunities Commission under the **Human Rights and Equal Opportunity Commission Act 1986** responsible for investigating alleged infringements under Australia's anti-discrimination legislation.

Non Legal measures include the establishment of Non Government Organizations such as The Human Rights Council of Australia which promotes 'understanding of and respect for human rights for all persons without discrimination through adherence to the International Bill of Rights, and other human rights instruments, internationally and within Australia' and other international organisations such as the eminent Amnesty International.

These measures have been relatively effective in Australia's protection of human rights however Australia has been criticized at various times for its immigration policies, treatment of asylum seekers, and treatment of its indigenous population. In response to these Australia had set up

enquiries such as the National Inquiry into Children in Immigration Detention into the mandatory detention and found that many basic rights outlined in the **Convention on the Rights of the Child** were denied to children living in immigration detention.

In Australia contemporary struggle for human rights is evident through the lack of 'genuine reconciliation' with the indigenous people and the health, economic and political disadvantages the indigenous population suffers from. This is evident in the figures that outline that indigenous peoples' life expectancy is an approximate 20 years less than the Australian population.

Moreover in the Census 2001, the Indigenous mean income was 62% of the rate for non-Indigenous persons, this disparity in income is a clear indication of the continued struggles faced by the indigenous community in an attempt to gain human rights. Attempts have been made on behalf of the Australian government to address issues regarding the indigenous population; an example of this is the establishment of the Royal Commission into Aboriginal Deaths in Custody which conducted enquiries regarding 99 deaths in custody and delivered 339 recommendations.

However, the Australian Institute of Criminology director Dr Adam Graycar reported that: "In the decade before the royal commission, 12.1 per cent of deaths in prison were Aboriginal people. In the decade since, that has risen to 17.2 per cent."

It is evident from the above statistics and Australia's past and contemporary human right struggles that there are limitations to the extent of the effectiveness of measures put in place to protect human rights and hence Australia's reputation as a respectable country in terms of human right protection questionable.