Human Rights

Lesson Two: Civil and Political Rights

***Learning Objectives***

***Knowledge***

1. *Understand and clarify the key contents of some salient civil and political rights*
2. *Understand the importance of these civil and political rights*

*Realise the possible threats to these civil and political rights and suggest actions to protect them*

***Skills***

1. *Critical Thinking Skills*
2. *Communication Skills*

***Values and Attitudes***

1. *Freedom*
2. *Privacy*

2 Civil and Political Rights

Most well-known human rights are civil and political rights. For example, all the classic human rights contained in the Hong Kong Bill of Rights (HKBOR, which mirrors the International Covenant on Civil and Political Rights [ICCPR ]) are of a civil and political character. These rights are usually framed in negative terms (ie "No one shall be subjected to torture ...", "No restrictions may be placed on the exercise of [freedom of peaceful assembly]..." etc). They embody the liberal values of autonomy, liberty and human dignity. The basic idea is that everyone should be left alone by the government to do as they desire, so long as one's actions do not affect others' being left alone.

In most circumstances, therefore, civil and political rights are secured if the government takes no action to violate them. As we shall see, however, there is more to civil and political rights that requires the government to take positive (proactive or reactive) measures to make such rights secure, even in the absence of governmental violation.

In the following sections, we shall discuss the nature and content of some of the salient civil and political rights, namely

1. Right to privacy
2. Freedom of belief
3. Freedom of expression and right to access to information
4. Freedom of association
5. Prohibition of slavery, servitude and forced labour

**2.1** *Right to Privacy*

*Right to privacy* (Art 12 UDHR; Art 17 ICCPR; Arts 29 and 30 Basic Law (BL); Art 14 HKBOR)



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| Art 12 UDHR | No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks. |
| Art 17 ICCPR | 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.  2. Everyone has the right to the protection of the law against such interference or attacks. |
| Art 29 Basic Law | The homes and other premises of Hong Kong residents shall be inviolable. Arbitrary or unlawful search of, or intrusion into, a resident's home or other premises shall be prohibited. |
| Art 30 Basic Law | The freedom and privacy of communication of Hong Kong residents shall be protected by law. No department or individual may, on any grounds, infringe upon the freedom and privacy of communication of residents except that the relevant authorities may inspect communication in accordance with legal procedures to meet the needs of public security or of investigation into criminal offences. |
| Art 14 HKBOR | (1)No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.  (2)Everyone has the right to the protection of the law against such interference or attacks. |

Without privacy, there can be no real autonomy. We naturally fear being ridiculed, ostracized or shunned, because human beings are social animals seeking acceptance by others, albeit not always consciously. If our lives are completely exposed to public scrutiny, our subconscious imperative for self-censorship would come feverishly into action.

The right to privacy values the person and social fulfilment as sacred in their own right. It serves dual purposes. On the one hand, it is about creating a comfortable distance between oneself and the rest of society, about retiring and being left alone from unwanted intrusions into your private realm. On the other hand, it protects the management of one’s intimate relationships and extends to the protection of one’s public reputation. As such, the right to privacy is conceptualized not exclusively as a negative limit to outside interference, but also as a positive claim to a zone of personal relationships and social participation.

The right to privacy may be categorized according to the five different “privacy interests” as follows:

1. “territorial privacy”: the interest in controlling entry to one’s home;
2. “personal privacy”: the interest in freedom from interference with one’s personal space, including one’s body and relationships with others;
3. “communications and surveillance privacy”: the interest in freedom from surveillance and from interception of one's communications.
4. “information privacy”: the interest of the person in controlling the information held by others about him;
5. “reputation privacy”: the interest in freedom from false statements which place one in a false light in the public eye



1. Territorial privacy

The right to privacy protects in the first place the home from arbitrary searches. A fundamental precept of a free society is that "a man's home is his castle". The sanctity of the home cannot be intruded unless for a search for necessary criminal evidence and the search should never be allowed to be conducted for the purpose of harassment.

1. Personal privacy

Similarly, the physical integrity of the person is protected. In this regard, a body search amounts to an imposed restraint on one’s personal freedom and therefore interference with the body. Such a personal search must be justified by a lawful purpose and, if carried out at all, should be in a manner consistent with the dignity of the person who is being searched. In legal terms, a police officer can conduct a body search only when he or she has reasons to suspect the person being search of criminal activity.

As stated, the right to privacy is not simply a right to be left alone. It is also a right to freely live one’s life and make fundamental decisions about whether and how one engages in personal and sexual intimacy. It is not, therefore, for the government to mandate preference for a certain lifestyle. Everyone should be able to express themselves in an intimate sphere of love and care. The criminalization of consensual homosexual conduct and unequal treatment of homosexuals was found by the courts to be impermissible for this reason: see eg *Leung TC William Roy v Secretary for Justice* [2005] 3 HKLRD 657.

**Question:**

**Consider the following scenarios. Has the police officer violated the individual’s right to privacy? (3 relevant questions to ask:**

**1) is there a lawful purpose?**

**2) is there reasonable suspicion to support the search?**

**3) is the search consistent with the individual’s dignity?)**

1. **An off-duty police officer, thinking no one can see what he is doing, touches a girl inappropriately on the MTR.**
2. **A visibly agitated man has a machine gun in his hands. A uniformed police officer stops him on the street, takes the gun away, and searches his bag for other dangerous items.**
3. **A girl is carrying what looks like a machine gun in her bag. A male uniformed police officer stops and searches her body. During the search, the police officer touches the girl inappropriately.**
4. **A murder happened three minutes ago in Hong Kong Island. A police officer stops and searches a man in the New Territories for the purpose of locating the murderer.**
5. Communications and surveillance privacy

The right to privacy implies that all forms of correspondence should be delivered to the addressee without interception and without being opened or otherwise read. Surveillance, online or offline, should be outlawed.

To investigate serious organized crime, law enforcement agents may sometimes indeed need to intercept emails or telephone conversations, and for good reasons. However, since surveillance of this kind constitutes a serious interference with private life and correspondence, and it is by definition unknown to the individuals concerned or the public at large, there must be robust procedural safeguards against abuse by the governmental authorities. Clear, detailed rules on when and how surveillance might ever be permissible are indispensable.

See further Human Rights Committee, *General Comment No 16* (1988) and DeCew, Judith, "Privacy", *The Stanford Encyclopedia of Philosophy*(Spring 2015 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/spr2015/entries/privacy/>.

1. Information privacy

The right to privacy also provides protection for personal

information, including such unique particulars as name

and gender that relate to the identity of an individual.

In Hong Kong, the personal particulars found on the

identity card (name in Chinese and English, gender,

date of birth and identity card number) can be regarded as unique as well as the most useful pieces of information that can be relied on to ascertain or verify the “personal identity” of an individual. Government authorities should only be able to demand such personal information from the individual when there is a “bona fide need” in the interests of society. Furthermore, the law should, and do now (through the Personal Data (Privacy) Ordinance), forbid the misuse of personal data by anyone.

**Question:**

**Police officers in Hong Kong have the legal power to force Hong Kong residents to produce their identity cards on demand. They are also entitled to record the information set out on the identity card in their notebook. Is it justifiable in terms of the right to privacy if a police officer on duty exercises these powers**

1. **Because he is curious what others’ photos look like on their identity card and wants to laugh at ugly photos with his friends later on Facebook;**
2. **Because he needs to check whether the individual in front of him is an illegal immigrant using a forged identity card;**
3. **Because the individual has dyed his hair, and the police officer believes that everyone who has dyed his or her hair must be criminals.**
4. Reputation privacy

Finally, the right to privacy concerns a person’s honour and reputation and avoidance of being placed in a false light. It has been recognized that ‘a person’s reputation … forms part of his or her personal identity and psychological integrity’ and therefore relates intimately to human dignity: *Pfeifer v Austria* (2009) 48 EHRR 8.

Typically, the right to reputation privacy is engaged when there is publicity falsely attributing to an individual some opinion or utterance, by publication, for example, of untrue information that would lower the standing of the individual in the eyes of the reasonable person. Understood in this way, reputation privacy has both similarities to and differences from disclosure of private facts: there are the same overtones of mental distress, but the two differ in that one involves truth (albeit one that the individual wishes to keep secret) and the other lies, one private or secret facts and the other invention.

Consequently, the government is under the obligation to ensure that the law renders defamatory statements unlawful and gives wronged individuals appropriate redress (eg compensation commensurate with the severity of the damage to reputation).

See generally William L Prosser, 'Privacy' (1960) 48 *California Law Review* 383.

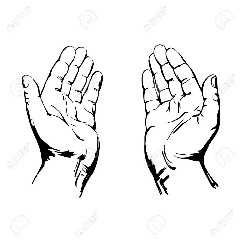
**2.2** *Freedom of belief*

*Freedom of belief (Art 18 UDHR; Art 18 ICCPR; Arts 32 and 137 BL; Art 15 HKBOR)*

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| Art 18 UDHR | Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. |
| Art 18 ICCPR | 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.  2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.  3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.  4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions. |
| Art 32 Basic Law | Hong Kong residents shall have freedom of conscience.  Hong Kong residents shall have freedom of religious belief and freedom to preach and to conduct and participate in religious activities in public. |
| Art 137 Basic Law | Educational institutions of all kinds may retain their autonomy and enjoy academic freedom. They may continue to recruit staff and use teaching materials from outside the Hong Kong Special Administrative Region. Schools run by religious organizations may continue to provide religious education, including courses in religion.  Students shall enjoy freedom of choice of educational institutions and freedom to pursue their education outside the Hong Kong Special Administrative Region. |
| Art 15 HKBOR | (1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.  (2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.  (3) Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.  (4) The liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions shall be respected. |

According to many distinguished historians, the modern genesis of the discourse of human rights finds its origin in the historic struggle for religious liberty from state interference and persecution. The most famous example is perhaps the Declaration of Independence 1766 which subsequently led to the birth of the United States of America, stating that “all men are … endowed by their Creator with certain unalienable Rights”, that “among these are Life, Liberty and the pursuit of Happiness.”

“Human rights” would be just a torso if one is deprived of even the right to hold political and ethical beliefs, including those in the concept of human rights itself.

For believers, religions obviously shape their identity and their conception of life; at the same time, beliefs and convictions matter hugely for atheists, agnostics and the unconcerned. The fact that democracy guarantees pluralism means that both religious and non-religious beliefs are entitled to protection.

1. Individual aspect of the right

The right to freedom of religion and belief includes, in addition to the freedom to actually hold religious beliefs, freedom to manifest one's religion or belief in worship, teaching, practice and observance. Indeed, if the right only enables individuals to believe secretly, with no right to practise and express those beliefs, then the right does not in fact protect very much at all.

Thus, the right entails freedom of religion (conviction inside one’s heart and mind) on the one hand, which is absolute, and freedom to manifest one's religion (the expression of that conviction in the public sphere) on the other, which can in some circumstances be restricted for the sake of society. Freedom of religion also includes the right of not to believe in any religion.

1. Communal aspect of the right



Apart from this individual aspect, one should not lose sight of

the communal or associational aspect to the freedom of religion and belief. Many rights generally understood to be religious are imperfect unless there is also freedom for individuals collectively to establish and regulate religious communities. As the European Court of Human Rights acknowledged, “[b]earing witness in words and deeds is bound up with the existence of religious convictions”: *Kokkinakis v Greece* (1993). Moreover, the “structure” and “management” of religious communities are often expressly based on religious doctrine, and thus warrants the highest degree of internal autonomy so long as it does not conflict other important public interests.

**Case: Which of the following involve a violation of the right to freedom of beliefs and faiths?**

1. **Banning a nurse working in the Accident and Emergency Room from wearing a cross necklace (note: restricts freedom to manifest; but justifiable because could cause infection to patients’ wounds)**
2. **Religious education in secondary schools (note: part of schools’ freedom to manifest; okay if not compelling students to believe; not okay if students are punished for not believing, in which case students’ freedom to not believe is violated)**
3. **Banning preaching in army (note: restricts freedom to manifest; but justifiable because superior-subordinate relationships create improper pressure; if no ban subordinate’s freedom to believe or not believe would be violated)**
4. **Locking up people unless and until they give up their religion**
5. **Banning headscarves (note: hugely affects Muslim women’s freedom to manifest; but may be justifiable on public safety grounds to help identify terrorists)**

See further Human Rights Committee, *General Comment No 22* (1993).

**2.3** *Freedom of expression and right to access to information*

*Freedom of expression and right to access to information (Art 19 UDHR; Art 19 ICCPR; Arts 26 and 27 BL; Art 16 HKBOR)*

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| Art 19 UDHR | Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. |
| Art 19 ICCPR | 1. Everyone shall have the right to hold opinions without interference.  2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.  3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:  (a) For respect of the rights or reputations of others;  (b) For the protection of national security or of public order (order public), or of public health or morals. |
| Art 26 Basic Law | Permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election in accordance with law. |
| Art 27 Basic Law | Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike. |
| Art 16 HKBOR | (1) Everyone shall have the right to hold opinions without interference.  (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.  (3) The exercise of the rights provided for in paragraph (2) of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary -  (a) for respect of the rights or reputations of others; or  (b) for the protection of national security or of public order (ordre public), or of public health or morals. |

On many levels, freedom of expression is an end of itself. It forms the backbone of one’s conscience, personal identity and self-fulfillment, which are fostered and reinforced only by repeated expression. It therefore includes the freedom to communicate with others, to identify and be identified with particular values or ideas, and to live one's life according to one's choice, which is the essence of liberty.

Freedom of expression further enables people to benefit from,

and in turn contribute to, debates about matters of social and

public concern. From the circulation of the widest possible range

of information emerges the truth. The interplay of ideas, challenging each other and allowing the strengths and weakness of each to be exposed, is more likely than any alternative strategy to lead to the best possible conclusion. Likewise, free expression gives life to the political discourse which is necessary to any country which aspires to democratic and participatory governance.

In short, the right to freedom of expression is one of the foundation stones of a free and democratic society, linked and conducive to transparency in government, public participation in decision-making, and the full development of the person. Indeed, freedom of expression, press freedom and the free flow of information in the world were emphasized in the very first session of the General Assembly of the United Nations in 1946: UNGA, Resolution 59(I) (14 December 1946) UN Doc A/RES/59(I).

The concern over information and the media so early in the life of the United Nations was a direct consequence of World War II and the emergence of techniques of propaganda perfected by the Nazis to promote war and racist ideology. The power of the media to distort truth and the systematic suppression of freedom of expression during the war stimulated a dual concern to defend freedom of information while ensuring that means of communication were not abused by the state.

1. Right to seek, receive and impart information and ideas of all kinds

In essence, freedom of expression implies the right to seek, receive and impart information and ideas of all kinds without fetters. It protects all kinds of expressions (including political, artistic and commercial expressions) and the means of their dissemination (whether written, verbal or symbolic). It is applicable not only to information and ideas that are regarded as inoffensive, but also to those that offend, shock or disturb.

The freedom to receive information implies a right of access to information held by bodies which exercise public functions. Although this right does not require the government to collect and disseminate information of its own motion or on individuals’ requests, individuals do have a vital interest in accessing records containing, for example, their personal data: *Gaskin v UK* (1990) 12 EHRR 36. To this extent, the Personal Data (Privacy) Ordinance (Cap 486) in Hong Kong, allowing individuals to access or correct their personal data being held by others, goes some way to securing the right to access to information.

Beyond this personal level, the right to access to information is engaged when it is instrumental for the exercise by the media or other social watchdogs (eg non-governmental organisations) of their right to freedom of expression. The gathering of the information on public affairs is usually an indispensable preparatory step in journalistic activities, which ultimately are to transmit the information to the general public. Thus, the United Kingdom Parliament has enacted the Freedom of Information Act 2000, under which citizens can seek disclosure of otherwise “sensitive” public information on the ground that the public interest so requires: see for example *Evans v Information Commissioner* [2012] UKUT 313 (AAC), where letters by Prince Charles to Government departments to advocate a view on public policy, although by nature “personal”, were ordered to be disclosed, because

"Those who seek to influence government policy must understand that the public has a legitimate interest in knowing what they have been doing and what government has been doing in response, and thus being in a position to hold government to account" (at [160]).

There is no comparable legislation in Hong Kong to ensure easy, prompt, effective and practical access to such information on public affairs held by the Hong Kong government. There is an administrative Code on Access to Information which is limited in scope as it applies only to civil servants. In addition, because of its non-statutory character, the Code cannot be legally enforced when, for example, it has been misapplied or breached by governmental departments in refusing access requests.

See further Office of The Ombudsman Hong Kong, *Direct Investigation Report: The Access to Information Regime in Hong Kong* (March 2014), available at <ofomb.ombudsman.hk/abc/files/DI238\_full\_E-20\_3\_2014\_with\_Appendix\_1.pdf>



[http://ofomb.ombudsman.hk/abc/files/DI238\_full\_TC- 20\_3\_2014\_with\_Appendix\_1.pdf](http://ofomb.ombudsman.hk/abc/files/DI238_full_TC-%2020_3_2014_with_Appendix_1.pdf) (Chinese)

1. Press freedom

For freedom of expression and of information to flourish, a free and independent mass media which keeps the public informed is vital. The role of the press is one of the “purveyors of information” and “public watch-dog”: *Lingens v Austria* (1986) 8 EHRR 407. Freedom of the press affords the public one of the best means, for example, of discovering and forming an opinion of the policies and performance of the government. The media is also the main vehicle for exercising the right of criticism, an essential condition for truly democratic politics. The need for free communication of information and ideas about public and political issues in any democratic system implies a free press and other media able to comment on public issues and to inform public opinion without censorship or restraint. The principle is that public figures are subject to a greater degree of criticism than other citizens in the interest of accountable government.

Information and communication technology has developed to the extent that those who are involved today in the production and dissemination of information no longer do so only through the pages of newspapers or the sights and sounds of television or radio. The internet in various forms, such as websites, blogs, and social networks, plays an increasingly integral role in the distribution of information. Newspapers also increasingly rely on the internet to reach their readers, and some have ceased publication in hard copy or reduced its scale. Moreover, the rise of user-generated content has enabled a complex intermingling of the contributions of professional journalists and vocal citizens in the production of news and analysis. As such, the new media and citizen and online journalists are also “journalists” in this sense.

On this score, it should be acknowledged that undue influence over editorial policies, for example through direct governmental control, or ownership or monopoly control of the media by those politically affiliated to the government or the establishment, is potentially a threat to freedom of the press, for the media is the defender of the public interest, not a mere propaganda mouthpiece serving governmental interests.

Independence of the media does not, however, necessarily mean that ownership of all media should be in private hands. The antidote to the problem of media monopoly in private hands is not to substitute state monopoly, but to ensure national diversity of ownership (by for example facilitating the work of journalists as much as possible).

**Question: The government has so far refused to admit “online media” into government venues for reporting. Should it have done so? (see Hong Kong Journalists Association’s press release:** <https://www.hkja.org.hk/site/portal/Site.aspx?id=A1-1516&lang=en-US>**.**

**For the government’s position, see** <http://www.info.gov.hk/gia/general/201701/11/P2017011100416.htm>**)**

**Hong Kong Police Force** POLICE GENERAL ORDERS CHAPTER 39 POLICE, PUBLIC AND MEDIA RELATIONS:

<https://www.police.gov.hk/info/doc/pgo/en/Epgo039.pdf>

**Question: An organization named Reporters Without Frontiers releases World Press Freedom Index every year. Find out the ranking of Hong Kong and the index formula. Share in class if you agree with the formula, your view on the ranking and level of press freedom in Hong Kong.**

See further Human Rights Committee, UN. *General Comment No 34* (2011).

*2.4 Freedom of association*

*Freedom of association (Art 20 UDHR; Art 21 ICCPR; Art 17 HKBOR)*

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| Art 20 UDHR | (1) Everyone has the right to freedom of peaceful assembly and association.  (2) No one may be compelled to belong to an association. |
| Art 21 ICCPR | The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. |
| Art 17 HKBOR | The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others. |

Freedom of association (and of assembly) is a logical corollary of freedom of speech. Individual expression “could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed”: *Roberts v United States Jaycees*, 468 US 609, 622 (1984). Individuals should generally be capable of joining in association to achieve various ends, including but not limited to political ends: see *Democratic Party v Secretary for Justice* (unreported, HCAL 84/2006, 21 May 2007). Hence, this right denotes the right to associate with like-minded people (consider societies in secondary schools), as well as the right for such an association to represent the common interests of its members (i.e. trade unions and professional bodies).

Not only does advocacy on a group association basis greatly enhance its effectiveness as a matter of instrumentality, the right to freedom of association is the natural reflection of the profoundly social nature of human endeavours. Freedom as social beings to act in concert with, and in mutual support of, each other is a primary condition of community life, human progress and civilized society. Apart from the procedural or instrumental right to belong to or form an association, therefore, the right to the association*activity* actually carried out in the exercise of other rights and freedoms, such as freedom of religion (as discussed above), is also protected. The right to freedom of association seeks to empower ordinary individual whose voices alone may otherwise be overwhelmed, in particular in the field of labour relations, given the vastly unequal power relationships between employers and employees, and the resulting vulnerability and lack of bargaining power of employees.

“Historically, those most easily ignored and disempowered as individuals have staked so much on freedom of association precisely because association was the means by which they could gain a voice in society.”

* McLachlin CJ and LeBel J in *Mounted Police Association of Ontario v Canada (Attorney General)* (2015)

Since the central purpose served by freedom of association is to right the social imbalances, if it is to be practical and effective, the right will necessarily imply a right to collective bargaining and, as the greatest weapon on the workers’ side of the bargaining table, a right to strike. Only through the exercise of these rights of collective action can the workers, often organized and represented by labour or trade unions, place pressure on the employer on a relatively more equal footing, and hopefully have their legitimate demands duly recognized and considered.



See generally *Mounted Police Association of Ontario v Canada (Attorney General)* [2015] 1 SCR 3 and *Saskatchewan Federation of Labour v Saskatchewan* [2015] 1 SCR 245

**2.5** *Prohibition of slavery, servitude and forced labour*

*Prohibition of slavery, servitude and forced labour (Art 4 UDHR; Art 8 ICCPR; Arts 28 and 33 BL; Art 4 HKBOR)*

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| Art 4 UDHR | No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. |
| Art 8 ICCPR | 1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.  2. No one shall be held in servitude. |
| Art 28 Basic Law | The freedom of the person of Hong Kong residents shall be inviolable.  No Hong Kong resident shall be subjected to arbitrary or unlawful arrest, detention or imprisonment. Arbitrary or unlawful search of the body of any resident or deprivation or restriction of the freedom of the person shall be prohibited. Torture of any resident or arbitrary or unlawful deprivation of the life of any resident shall be prohibited. |
| Art 33 Basic Law | Hong Kong residents shall have freedom of choice of occupation. |
| Art 4 HKBOR | (1) No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.  (2) No one shall be held in servitude.  (3) (a) No one shall be required to perform forced or compulsory labour.  (b) For the purpose of this paragraph the term "forced or compulsory labour" shall not include -  ( i ) any work or service normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;  ( ii ) any service of a military character and, where conscientious objection is recognized, any national service required by law of conscientious objectors;  (iii) any service exacted in cases of emergency or calamity threatening the life or well-being of the community;  (iv) any work or service which forms part of normal civil obligations. |

Throughout history, slavery and slave trade were the best-known form of exploitation of human beings. Conquerors would wage wars to secure the manpower of slaves, who were then sold like objects for profit. The reference to black slaves in the North America of the 19th century still evokes vivid imagery. However, while institutionalized slavery has been abolished virtually everywhere, slavery is not a horror safely consigned in the past. The modern conception of “slavery”, and the related concepts of “servitude” and “forced labour”, has much same general tenor as it did.

1. Defining the concepts

Thus, “slavery” refers to the exercise of a genuine right of ownership and reduction of the status of the slave to an “object”. “Servitude” involves particularly serious form of denial of personal liberty, entailing an obligation to provide one's services that is imposed by the use of coercion, and is conceptually linked with the concept of “slavery”. “Forced or compulsory labour” means the individual concerned is put under some physical or mental constraint to work against his or her will, with no remuneration.

The hierarchy here descends in terms of gravity: slavery (requiring ownership), servitude (requiring forced labour coupled with confinement of personal liberty) and forced labour (involuntary work extracted under menace with no proprietary element).

1. Modern examples

The modem kind of slaves are no longer labelled or sanctioned as such by law, but they are nevertheless bound in psychological chains – and sometimes bought and sold as a de facto item of property – all the same.

One somewhat surprising yet wholly correct and principled example can be found in Kenyan court case (*Republic of Kenya v Kadhi of Kisumu, ex parte Nasreen* (1973)). It was held by the court a domineering husband who forces his wife to stay with him and comply with his physical demands, subjects the wife to the effective dominion of the husband. The degradation of dignity of the wife was to such an extent that it constituted servitude.

The plight of domestic servants in some countries also make them victims of modern slavery. They work; they barely rest; they never get paid, or even if they do, the salary is meagre at best; and they are not allowed to leave the household in which they have been “hired” to work. The harsh working and living conditions, coupled with the systematic confiscation of passports, often leave the victims in a situation of complete vulnerability with regard to their employers. Some would even have to endure physical or sexual violence. Cumulatively, this can amount to holding a person in servitude or worse.

**Question: In recent years, there have been reports about foreign domestic helpers in Hong Kong who are seriously abused by their employers. Does their situation fall within the meanings of slavery, servitude or forced labour? Collect news and make a presentation on your judgment.**



See further *Faure v Australia*, Communication No 1036/2001 (United Nations Human Rights Committee, 23 November 2005) UN Doc CCPR/C/85/D/1036/2001.

See generally James Griffin, *On Human Rights* (Oxford University Press 2008)

**Learning Activity 6: Cell phone password**

Chri Wong’ school administration has concerns about students using illegal drugs during their lunch breaks or after school. One day at lunchtime, Chris was having lunch at a fast-food stall near school. There was a fight among some students from his school at the fast-food stall and luckily no one was seriously hurt.

School officials heard about the confrontation and speculated that it might have been drug-related. One of the students involved reported that Chris has recorded the later part of the fight. The principal demanded Chris turn over his smart phone and provide the password.

The principal discovered that in one of Chris’ whatsapp group, some students talked about price and channels to get marijuana. Police was called in.

**QUESTIONS TO CONSIDER:**

1) Should the school get involved in incidents that occurred off school property? Why or why not?

2) What was the principal’s goal in looking through Chris’ smart phone? Do you think the principal’s actions were fair? Why or why not?

3) When, if ever, should schools have the authority to look though a student’s personal cell phone? When, if ever, should school officials be allowed to give police information they find on a student’s personal cell phone?

4) Should the standard for searching a cell phone be different for police than for principals i.e. should police be required to get a search warrant first? Why or why not?

